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Item No. 83 - Intellectual Property Law - The National Congress

Considering:

That the protection of intellectual creation is a basic right, as conceived in the Universal Declaration of Human Rights, approved by the United Nations General Assembly in 1948;

That it is the function of the State to assume the defense of intellectual rights;

That the protection of intellectual property is vital for the technological and economic development of the Country, promote investment in research and development, stimulate national technological production and give Ecuador a comparable advantage in the new worldeconomic order;

That the lack of an adequate protection for the rights of intellectual property restricts free competition and prevents economic growth with respect to a wide variety of goods and services composing intangibles assets;

That competitivity of Ecuadorian industry and commerce in the international market depends more on its capacity to incorporate technological advances into the production and trade of its goods and services;

That the protection of intellectual rights must respond to universal principles and international harmony;

That Ecuador has joined the World Trade Organization and has ratified the Agreement on Intellectual Property Rights Aspects related to Commerce (IPRAC);

That in Ecuador are current several norms for international application implying an integral amendment to laws on the subject of Intellectual Property, such as copyrights, especially on the Bern Agreement for the Protection of Literary and Artistic Work, the Act of Paris, the Rome Convention on Protection to Artists, Interpreters or Performers, the Producers of Phonograms and Organizations of Radio Broadcasting, which despite their ratification in 1963 were not reflected in our legislation, the Universal Convention on Copyrights, the Common Regime on Copyrights and Adjoining Rights, regulated by Decision No. 351 of the Commission for the Cartagena Agreement, in force for all countries in the Andean Community; and the protection for Intellectual Property;

That the State must optimize human, technological and economic resources, unifying the administrative application of laws on Industrial Property, Vegetal Obtention and Copyrights; and,

In exercise of its constitutional and legal powers, issues the following:

INTELLECTUAL PROPERTY LAW
PRELIMINARY TITLE

Art. 1. The State recognizes, regulates and guaranties intellectual property acquired according to law, the Decisions of the Commission of the Andean Community and the current international agreements in Ecuador.

Intellectual property comprises:

1. Copyrights and adjoining rights.
2. Industrial property, which includes, among others, the following elements:

    a. Inventions;
    b. Industrial drawings and models;
    c. Tracing schemes (topography) for integrated circuits;
    d. Undisclosed information and commercial and industrial secrets;
    e. Trademarks, manufacturing marks, service marks, and trade names and logos;
    f. Distinctive appearances of business trade establishments;
    g. Commercial names;
    h. Geographical indications;
    i. Any other intellectual creation destined to agricultural, industrial or commercial use.

3. The new plant varieties.

    The norms of this Law do no limit nor impair on the rights set forth in the Biological Diversity Agreement, nor by the laws issued in Ecuador on this subject.

Art.2. The rights conferred by this Law apply equally to national and foreign persons, domiciled or not in Ecuador.

Art. 3. The Ecuadorian Institute for Intellectual Property (in Spanish IEPI) is the Competent Administrative Organization to propitiate, promote, fomenting, prevent, protect and defend in the name of the Ecuadorian State, the intellectual property rights recognized in this Law and in the international treaties and agreements which on this matter shall be known by the Judicial Function.

BOOK I - TITLE I - COPYRIGHTS AND ADJOINING RIGHTS
CHAPTER I - COPYRIGHTS - GENERAL PRINCIPLES

Art. 4. Copyrights are recognized and guaranteed and the rights of other title holders over their works.

Art. 5. A copyright is born and is protected by the only fact of its creation of the

works, independently of its merits, destination or mode of expression.

All radio broadcasting works, interpretations, performances, productions or radiophonic emissions, whichever would be the country of origin of the works, the nationality or domicile of the author or title holder are protected. This protection shall also recognize whatever would be the place of publication or disclosure.

The recognition of copyrights and adjoining rights is not subject to registration, deposit, nor to compliance with any formality.

The adjoining right is born from the necessity to insure protection to the rights of artists, interpreters or performers
and the producers of phonograms.

Art. 6. The copyright is independent, compatible and accumulative with:

a) The property and other rights whose object is a material thing to which the works are incorporated;

b) The rights of industrial property which may exist over the works; and,

c) The other rights of intellectual property recognized by law.

Art. 7. For the effects of this Title the terms indicated below shall have the following meanings:

Author: Natural person who makes an intellectual creation.

Artist interpreter or performer: Person who represents, sings, reads, recites, interprets or performs in any form some works.

Domestic environment: Framework of family reunions, made in the living home which serves as the main home quarters.

Data base: Compilation of works, facts or data in printed form, in a computer storage unit or any other form.

Assignee: Natural or juridical person who by any title has acquired rights recognized under this Title.

Collection: An assembly of things commonly of the same class or gender.

Compilation: Grouping under the same scientific or literary body of several laws, news or subjects.

Sample copy: Material support containing the works or production, including both

what results from fixing the original as that resulting from reproduction action.

Adjoining rights: Are the financial rights by public communication to which the artists, interpreters or performers, producers of phonograms and broadcasting organizations are entitled.

Distribution: Placed at disposition of the public, from the original or copies of the works, by means of sales, leasing, public loan or any other form well known or to be known of transfer of the property, possession or tenancy of such original or copy.

Disclosure: The act of making accessible the works to the public for the first time, with the consent of the author, by any means or procedure known or to be known.

Editor: Natural or juridical person who by written contract with the author or his assignee is obligated to assure the publication and dissemination of the works by his own account.

Emission: Diffusion at distance of sounds, images or both by any means or procedure, known or to be known, with or without the use of satellites, for its reception by the public. Comprises also the production of signals from a land station to a broadcasting or telecommunications satellite.

Folklore expressions: Production of elements characteristic of traditional cultural patrimonial values, constituted by an assembly of literary and artistic works, created in the national territory, by unknown or unidentified authors, presumed to be native of the Country, of their ethnical communities and transmitted from generation to generation, in a way to reflect the artistic or literary traditional expectations of a community.

Fixation: Incorporation of signals, sounds, images or their digital representation, over a material base which allows its reading, perception, reproduction, communication or usage.

Phonogram: All fixations exclusively by sound of the sounds of a performance or of other sounds or their digital representations. Gramophonic, magnetophonic or digital recording tapes are copies of phonograms.

Ephemeral recording: Temporary fixation, by sound or audiovisual of a representation or performance or of a radio broadcasting emission, made by a radio broadcasting organization using their own means to be employed in their own radio broadcasting emissions.

License: Authorization or permit granted by the title holder of the rights to the user of the works or other protected production, to be used in a determined manner and according to the agreed upon conditions in the contract. It does not transfer any title to the rights.

Works: Any original intellectual creation, susceptible of being disclosed or reproduced in any form, known or to be known.

Anonymous works: That in which the identity of the author is not mentioned by his will.

Audiovisual works: Any creation expressed by means of a series of associated images, with or without sound, essentially destined to be shown through projection devices or any other means of images and sound communication, independent of the supporting materials it may contain.

Applied art works: Artistic creation with utilitary functions incorporated into a useful article, either an artisans works or produced in an industrial scale.

Works in collaboration: Jointly created by two or more persons.

Collective works: Created by several authors, by initiative and under the responsibility of a natural or juridical person, who publishes or discloses it with his own name, and in which is not possible to identify the authors or individualize their contributions.

Works by special order: The product of a contract for the making of a determined works, without intermediary with the author and a relationship of employment or labor with the one who orders it.

Unpublished works: Not disclosed with the consent of the author or his rights holders.

Plastic or fine arts works: Artistic creation whose purpose appeals to the aesthetic sense of the person who contemplates it, such as paintings, drawings, engravings and lithographs. Photographs, architectural and audiovisual works are not included in this definition for the purposes of this law.

After death works: In addition to those not published during the life of the author, those which the author bequests them as additions, with notes or corrections in a way that they may be regarded as new works.

Radio broadcasting organization: Natural or juridical person who decides on the emissions and determines the condition for emission by radio and television.

Producer: Natural or juridical person who takes the initiative, coordination and responsibility in the production of works, i.e. audiovisual works, or computer programming.

Phonograms producer: Natural or juridical person under whose initiative, responsibility and coordination the sounds of a performance, or other sounds or digital representations are fixed for the first time.

Computer program (software): Any sequence of instructions or indications destined to be used, directly or indirectly, in a device for automatic reading, computer, or electronic or similar device with capacity to process information, for the performance of a function or a task, or to obtain a determined result, whatever would be its form of expression or fixation. Computer programming comprises also the preparatory documentation, plans and designs, technical documentation, and manuals for their use.

Publication: Production of sample copies placed for the public with the consent of the title holder of the respective right, provided that the availability of such copies allows to satisfy the reasonable needs of the public, taking into account the nature of the works.

Radio broadcasting: Communication to the public by wireless transmission. Radio broadcasting includes that performed with a satellite from the injection of the signal, in the ascending stage, to the descendant of the transmission, until the program contained in the signal is placed at the reach of the public.

Reproduction: Consists in the fixation of the works in any means or by any procedure, known or to be known, including its digital storage, temporary or definite, and the obtention of copies of everything or part of the works.

Retransmission: Re-emission of a signal or of a program received from other source , made by diffusion of signals, sounds or images, either by wireless diffusion, or through cable, thread, optical fiber or any other procedure known or to be known.

Title Ownership: Quality of the natural or juridical person who owns the recognized title to this Book.

Honest usage: That which does not interfere with the normal exploitation of the works nor cause any damage to the legitimate interests of the author.

Videogram: Fixation of an audiovisual works.

SECTION II - OBJECT OF THE AUTHOR'S RIGHT

Art. 8. The protection of the author's right befalls over all talent works, in the literary or artistic environment, whatever its gender, manner of expression, merits or purpose. The rights recognized by this Title are independent of the property of the material object which incorporates the works and its enjoyment or exercise are not under the requirement of registration or compliance with any other formality.

The works protected, among others, are as follows:

a) Books, pamphlets, print outs, epistles, articles, novels, tales, poems, chronicals, criticals, essays, letters, theater, movies, television scripts,

conferences, speeches, lessons, sermons, legal allegations, memorials, and other works of similar nature, expressed in any form;

b) Collections of works, such as anthologies or compilations and data basis of all kinds, which by selection or disposition of subjects constitute intellectual creations, without prejudice to the author's rights subsisting over the materials or data;

c) Dramatic or musical dramatic works, choreographies, pantomimes, and, in general, theatrical works;

d) Musical compositions with or without wording;

e) Cinema works or any other audiovisual works;

f) Sculptures and painting works, drawings, engravings, lithographs and graphic stories, comics, as well as essays or outlines and other plastic works;

g) Projects, plans, models, and design of architectural or engineering works;

h) Illustrations, graphs, maps, and designs relating to geography, topography, and scientific in general;

i) Photography works and those expressed by analogous procedures to photography;

j) Applied art works, even though their artistic value may not be disassociated from industrial aims of the objects to which they are incorporated;

k) Computer programming; and,

l) Adaptations, translations, legal allegates, reviews, updatings and notations; briefs, summaries, and extractions, and other transformations of a works made with the expressed authority of the authors of original works, without prejudice to their rights.

Without prejudice to industrial property rights, the titles of the radio or television programs and newscasts, newspapers, magazines and other periodical publications, are protected during one year after the release of the last number or public communication of the last program, unless they deal with yearly publications or productions, in which case the term of protection shall be extended to three years.

Art. 9. Without prejudice to the rights which subsist over the original works and the corresponding authorization, derivative works are also subject to protection, provided they possess originality, as follows:

a. Translations and adaptations;

b. Reviews, updatings and notations;

c. Summaries and extracts;

d. Musical arrangements; and,

e. Other transformations of literary or artistic works.

The creations or adaptations, that is, based on tradition, expressed in a group of individuals who reflect the expressions of the community, its identity, values transmitted verbally, by imitation or by other means, used either in the literary, music, games, mythology, rituals, habits, artisan works, architecture or other arts, shall respect the rights of the communities according to the Convention which governs exports, imports, transfers of cultural property and those instruments agreed upon under the auspices of the WTO for the protection of expressions against their illegal exploitation.

Art. 10. Copyrights protect also the form of expression through which the ideas of the author are described, explained, illustrated or incorporated in his works.

Not subject to protection are:

a. The ideas contained in the works, the procedures, methods of operation or mathematical concepts by themselves; the systems or ideological or technical content of scientific works, nor its industrial or commercial use; and,

b. The legal and regulatory dispositions, judicial decisions and acts, agreements, deliberations and judgements of public organizations, as well as their official translations.

SECTION III - TITLE HOLDERS OF RIGHTS

Art. 11. Only a natural person may be an author. Juridical persons may be title holders of copyrights, according to this Book.

In order to determine title holding the application of the law in the country of origin of the works shall govern, according to the criteria of the Bern Convention, Act of Paris 1971.

Art. 12. The person whose name, pseudonym, initials, symbol, or any other sign which identifies him and appears in the works shall be presumed as the author or title holder of the works, unless there is proof to the contrary.

Art. 13. In division collaboration works, each collaborator is a title holder of the rights over the portion of his authorship, unless there is an agreement to the contrary.

In an undivided collaboration works, the rights belong in common and undivided to the authors, unless there would be an agreement to the contrary.

Art. 14. The copyright does not form a part of a marriage partnership and may be freely administered by the spouse who is the author or a rights holder of the author. However, financial benefits derived from the exploitation of the works form a part of the marriage partnership capital.

Art. 15. Unless there is an agreement to the contrary, the juridical or natural person who has organized, coordinated and directed the works who may exercise in his own name the moral rights for the exploitation of the works, shall be considered as the title holder to the author's rights of a collective works.

The natural or juridical person who appears indicated in the works shall be presumed as the title holder of a collective works.

Art. 16. Unless there is an agreement to the contrary or special disposition contained in this book, the title ownership of the works created under a labor dependency relationship shall correspond to the employer, who shall be authorized to exercise the moral rights for the exploitation of the works.

In the works created by special order, the ownership shall correspond exclusively to the constituent, hence the author shall preserve the right of exploitation in a different manner from that outlined in the contract, provided this does not imply disloyal competition.

Art. 17. In an anonymous works, the editor whose name appears in the works shall be considered a representative of the author, and is authorized to exercise his moral and capital rights, until the author reveals his identity and justifies his qualifications.

SECTION IV - COPYRIGHT CONTENTS
PARAGRAPH ONE - MORAL RIGHTS

Art. 18. Constitute irrevocable, inalienable, non attachable and imprescriptible copyrights the following:

a) Claim the authorship of his works;
b) Maintain the works unpublished, anonymously or demand that his name or pseudonym be mentioned every time the works are used;
c) Oppose any deformation, mutilation, alteration or modification of the works, which may damage the honor or reputation of the author;
d) Have access to the only one or rare copy of the works owned by a third party, in order to exercise the right of disclosure or any other applicable right; and,

e) The violation of any one of the rights established in the above items shall cause a compensation for damages independently of other actions contemplated in this Law.

This right shall not allow to demand displacement of the works, and access to same shall take place in the manner causing the least inconvenience to the owner, who

shall be compensated for the damages caused, as applicable.

Upon the author's death, the exercise of the rights mentioned in items a) and c) shall correspond to his heirs, without a time limitation.

The heirs may exercise the right set forth in item b), during a period of seventy years from the date of death of the author.

PARAGRAPH TWO - PATRIMONIAL RIGHTS

Art. 19. The author enjoys the exclusive right of exploiting his works in any form and to obtain its benefits, save the limitations set forth in this Book.

Art. 20. The exclusive right of exploitation of the works specially comprises the faculty to perform, authorize or prohibit the following:

a) Reproduction of the works by any form or procedure;
b) Public communication of the works by any means serving to disseminate words, signals, sounds or images;
c) Public distribution of copies of the works through sales, leasing, or renting;
d) Imports; and,
e) Translation, adaptation, arrangement or other transformation of the works.

The exploitation of the works by any form, and specially through any of the actions listed in this article is illegal without the expressed authorization of the holder of the copyrights, save the exceptions provided in this Law.

Art. 21. The reproduction consists in the fixation or replica of the works by any means or procedure, known or to be known, including its digital storage, temporary or definite, in a way that allows its perception, communication or obtention of copies of all or part of it.

Art. 22. Public communication means any act by virtue of which a gathering of persons, who meet or not at the same place and, in the moment in which individually decide, may have access to the works without previous distribution of copies to each of them, like in the following cases:

a) Scenic representations, public recitals, dissertations and performances of dramatic, dramatic, musical, literary and musical works by any means or procedure;

b) The projection or public exhibit of cinema and other audio visual works;

c) Radio broadcasting or communication to the public of any works by any means serving to broadcast, without wires, the signals, sounds or images, or digital representation of same, simultaneously or not.

The transmission of codified signals carrying the programs is also an act of public communication, provided decoding means are placed at the public's disposition, with or without their consent, by the radio broadcaster.

In order to follow dispositions in the two previous paragraphs, by satellite shall be understood any one which operates in frequency waves reserved by the telecommunication laws for the diffusion of signals for reception by the public, or for individual communication not public, provided that in this last case the circumstances involved for the individual reception of signals be comparable to those applicable in the first case.

d) The transmission of works to the public by wire, cable, fiber optics or other analogous procedure, with or without prior payment;

e) The retransmission of the broadcasted works by radio, television, or any other means, with wires or wireless, when is made by an entity distinct from the one of origin;

f) The emission, transmission or pick up of the broadcasted works, in a place accessible to the public, by means of any suitable instrument;

g) Public presentations or expositions;

h) Public access to computer data bases by means of telecommunications, when these incorporate or constitute protected works; and,

i) The diffusion by any known or to be known procedure of signals, words, sounds, images of their representation, or other forms of expression of works.

Any communication exceeding the strictly domestic environment shall be considered public.

Art. 23. By right of distribution the title holder of the author's rights has the faculty of placing at the disposition of the public the original or copies of the works through public sales, leasing, loans or any other fashion.

By leasing is understood the placing at disposition of the originals and copies of the works for a limited time usage and with a financial direct or indirect commercial benefit. Excluded from this concept is the renting for the purposes of this norm and the placing at disposition in an exhibit and those for consultation at the place.

By loan is understood the placing at disposition of the originals and copies of some works through establishments accessible to the public for their use during a limited time without a financial direct or indirect commercial benefit. The exclusions indicated in the previous paragraph shall equally apply to a public loan.

The right of distribution through sales is extinguished after the first sale and, only

with respect to successive resales within the country, but is not extinguished nor does it affect the exclusive right to authorize or prohibit the public renting or loan of the copies sold.

The author of an architectural works or applied work of art cannot be opposed to the renting or construction of the works by its owner.

Art. 24. The right of import grants the title holder of the copyright the faculty to prohibit the introduction in the Ecuadorian territory, including analogical and digital transmission of the original or copies of protected works, without prejudice to obtaining a like prohibition with respect to illegal copies. This right may be exercised both to suspend the incoming of the original and copies at the borders, and to obtain the withdrawal or suspend the circulation of the copies that would have already come in. This right shall not affect the copies which are a part of some personal baggage.

Art. 25. The title holder of the author's right of applying or demand that it be applied the technical protections believed pertinent, through the incorporation of means or devices, coding of signals and other tangible or intangible protection systems in order to impede or prevent the violation of his rights. The acts of importation, manufacturing, sales, renting, proposal of services, placing into circulation, or any other form to facilitate devices or means destined to decipher or decode codified signals or in any way deceive or break the means of protection applied by the title holder of the copyright, performed without his consent, shall be assimilated as a violation of the copyright for the effect of civil sanctions as well as to exercise preventive measures as applicable without prejudice to the penalties incurred by the crime.

Art. 26. Violations of the rights set forth in this book also constitute any one of the following acts:

a) Remove or alter without the corresponding authorization, electronic information concerning the regime of rights; and,

b) Distribute, import or communicate to the public the original or copies of the works knowing that the electronic information on the regime of rights has been removed or altered without authorization;

It shall be understood by electronic information that included in the copies of the works, or that appear in relation to a communication to the public of some works, which identify the works, the author, the title holders of any copyright or adjoining right, or the information concerning the terms and conditions of usage of the works, as well as the number and codes representing such information.

Art. 27. The exclusive right of exploitation, or separately any one of its modalities, is susceptible to be transferred and, in general, any act or contract provided for by this Law, or possibly under the civil code. In case of transfer, at any title, the acquiring

party shall enjoy and exercise title holding. The transfer must specify the modalities comprised, in a manner that the transfer of the right of reproduction does not imply the right to public communication nor vice versa, unless such are expressly agreed upon.

The alienation of supporting material does not imply the assignment or some authorization with respect to the copyright over the pertinent works.

The transfer of the right of exploitation over future works is valid, if they are especially determined or by their gender, but in this case the contract may not last over five years.

SECTION V - SPECIAL DISPOSITIONS OVER CERTAIN WORKS
PARAGRAPH ONE - COMPUTER PROGRAMS

Art. 28. Computer programs are considered literary works and are protected as such. This protection is granted independently that they have been incorporated into a computer and the way in which they are expressed, either in a legible form by man (source code) or in legible form by machine (object code), being operational programs and applying programs, including flow programs, plans (drawings), usage manuals, and in general, those elements forming the structure, sequence and organization of the program.

Art. 29. The producer is the title holder of a computer program, being a natural or juridical person who takes the initiative and responsibility to make up the works. The person whose name appears in the works or its copies in the usual manner shall be considered the title holder, unless there is proof to the contrary.

Such title holder is also legitimated to exercise in its own name the moral rights over the works, including the faculty to decide over its disclosure.

The producer shall be exclusively entitled to conduct, authorize or prohibit the performance of modifications or versions succeeding the program, or of programs derived from same.

The dispositions of this article may be modified by means of an agreement between the author and the producer.

Art. 30. The acquisition of a copy of a computer program which has illegally circulated, authorizes its owner to exclusively make the following:

a) A copy of the version of a legible program by machine (object code) with the purpose of security or back up;

b) Fix the program in the computer's internal memory, so that such fixation disappears or not turn it off, with the only purpose and in the measure

necessary to make use of the program; and,

c) Unless there is an expressed prohibition, adapt the program for his exclusive personal use, provided it is limited to the normal use provided for in the license. The acquiring party may not transfer at any title the support data contained in the adapted program, nor can use it in any other form without expressed authority as governed by general rules.

Authorization from the title holder of the rights for any other use shall be required, including the reproduction for personal use or the benefit of the program for several persons, through networks or other analogous systems, known or to be known.

Art. 31. It would not be considered that there is a lease of a computer program when that is not an essential part of the contract. It is considered that the program is the essential object when the functionality of the object of the contract, depends directly from the computer program supplied with such purpose; as when a computer is leased with previously installed programs.

Art. 32. The exceptions to copyrights set forth in articles 30 and 31 are the only ones applicable with respect to computer programs.

The norms contained in this Paragraph shall be interpreted in a manner that their application does not harm the normal exploitation of the works or the legitimate interests of the title holder of the copyright.

PARAGRAPH TWO - AUDIOVISUAL WORKS

Art. 33. Unless there is an agreement to the contrary, coauthors of the audiovisual works are considered:

a) The director or performer;
b) The authors of the argument, the adaptation, the script and dialogues;
c) The author of music specially composed for the works; and,
d) The draftsman, in case of animated cartoons.

Art. 34. Without prejudice to copyrights of preexisting works which have been adapted or reproduced, an audiovisual work is protected as an original work.

The authors of preexisting works may exploit their contribution in a different gender, but the exploitation of the common works, as well as the works specially created for audiovisual works, correspond exclusively to the title holder according to the following article.

Art. 35. The producer is reputed to be the title holder of an audiovisual works, that is the natural or juridical person who assumes the initiative and responsibility of conducting the works. Producer shall be considered, unless there is proof to the contrary, the natural or juridical person whose name appears in such works in the

usual fashion.

Said title holder is also legitimated to exercise in his own way the moral rights over the works including the faculty to decide on its disclosure.

All of this understood without prejudice to the stipulations and reservations expressed between the authors and the producer.

PARAGRAPH THREE - ARCHITECTONICAL WORKS

Art. 36. The author of architectural works may oppose to the modifications which aesthetically or functionally alter his work.

For the modifications which are necessary in the process of construction or thereafter, the simple authorization of the architect, author of the project, shall be required, who may not deny it, unless he considers that the proposed modification alters his work aesthetically or functionally.

The acquisition of an architectural project implies the right of the acquirer to execute the work projected, but it requires the written consent of its author in the terms he indicates according to the Law of Professional Exercise of Architecture, to be used in other works.

PARAGRAPH FOUR - PLASTIC ARTS WORKS AND OTHER WORKS

Art. 37. The acquirer of a material object which contains a work of art has the right to exhibit it in public, at any title, unless there is an agreement to the contrary.

Art. 38. If the original of a plastic arts work, or the original manuscript of the writer or composer would be resold in a public bidding, or if in such resale a trader of such works would intervene directly or indirectly in the capacity of buyer, seller or agent, the seller must pay the author or his heirs, as applicable, a share equivalent to five per cent of the selling price, unless there is an agreement to the contrary. This is an unrenounceable and inalienable right.

Art. 39. Those responsible for business establishments, the trader or any other person who has intervened in the resale shall be solidarily responsible with the seller for the payment of this right and must notify the resale to the corresponding action company, or instead, to the author or his right holders, within a term of three months, accompanying the pertinent documentation for the practice of a liquidation.

Art. 40. The portrait or bust of a person may not be traded without the consent of the same person and, after his death, of his inheritors. However, the publication of the portrait is free, when it is only related to scientific, didactic or cultural purposes or

to facts or events of public interest or that had been developed in public.

Art. 41. The author of a photographic work or the maker of a simple photograph of a person, shall count with the authorization of the photographed person, and at his death, of his inheritors, in order to exercise the copyright or adjoining rights, as applicable. The authorization shall be granted in writing and refer specifically to the type of usage authorized for the image. However, the use of the image shall be legal when it has been obtained during the regular course of public events and respond to cultural or information purposes, or be made in association with facts or events of public interest.

SECTION VI - TRANSMISSION AND TRANSFER OF RIGHTS
PARAGRAPH ONE

TRANSMISSION DUE TO CAUSE OF DEATH

Art. 42. The rights of the author are transmitted to his heirs and beneficiaries according to dispositions in the Civil Code.

Art. 43. In order to authorize any exploitation of the works, by any means, the consent of the heirs representing the majority portion shall be required.

When the majority make use or exploits the works, shall deduct from the total financial profit, the expenses incurred and shall deliver the corresponding share to those who were not able to express their consent.

PARAGRAPH TWO - EXPLOITATION CONTRACTS FOR THE WORKS
FIRST - CONTRACTS IN GENERAL

Art. 44. The contracts over authorization of use or exploitation of works by third parties must be granted in writing, are costly and would last during the time set forth in same. However, may be renewed indefinitely by common accord between the parties.

Art. 45. The various forms of exploitation of a work are independent between themselves, and by virtue of same, the contracts shall be understood as restricted to the forms of exploitation expressly contemplated and to the territorial area set forth in the contract. Any rights which have not been expressly stipulated shall be understood as reserved rights, and by the disposition covering the territory, this shall be the country where the contract was performed.

The transfer of the right of reproduction shall imply the right of distribution through sale of copies whose reproduction has been authorized, when that fact is naturally included in the contract or would be indispensable to comply with its purpose.

Art. 46. The exclusive transfer of copyrights confers upon the grantee the right of

exclusive exploitation of the works, opposing any third party and ahead of the author. It also confers the grantee the right to grant concessions or licenses to third parties, and to perform any other act or contract for the exploitation of the works, without prejudice to the corresponding moral rights.

In a non exclusive transfer, the grantee is authorized to exploit the works in the manner set forth in the contract.

Art. 47. Without prejudice to what is prescribed with respect to the works created under a labor relationship of dependency, the transfer of patrimonial rights over the assembly of works that the author may create in the future shall be null and void, unless they are clearly determined in the contract and that the contract does not exceed five years.

It is equally null and void any stipulation by which the author commits not to create any works in the future.

Art. 48. The title holder of the copyright may equally grant to third parties licenses for use, non exclusive and not transferrable. The acquisition of copies of the works that are traded together with the corresponding license, shall imply the consent of the acquirer to the terms of such licenses.

Art. 49. The natural or juridical person who has engaged newspaper articles and jobs, photographs, graphs or other works susceptible of publication through periodicals, magazines or other means of public diffusion, has the right of publishing such works as pertinent, as well as to authorize or prohibit the use of the works by similar or equivalent means as to the original publication. The rights of exploitation of the author in different means of diffusion not entailing competition with the original publication are not applicable to this case.

If such works would have been made under a labor relationship of dependency, the author shall preserve the right to make an independent edition as collection.

The dispositions of this article may be modified by agreement between the parties.

SECOND - EDITION CONTRACTS

Art. 50. A contract of edition is that one by which the author or his copyright holders transfer to another person named the editor the right to publish and distribute the works by his own account and risk, in the conditions agreed upon.

Art. 51. If the author has previously entered into a contract of edition over the same works, or if such works have been published with his authority or knowledge, he should make these conditions known to the editor before entering into a contract. Should the author would not do so, he shall be responsible for damages caused.

Art. 52. The editor may not publish the works with abbreviations, additions, deletions or any other modifications, without the author's consent.

Art. 53. The author shall preserve the right to make to his works any corrections, amendments, additions or improvements as he deems convenient before printing.

When the modifications would increase the price of the edition, the author shall be obligated to reimburse the expenses incurred by this reason, unless there is an agreement to the contrary.

If the modifications imply basic changes in the contents or shape of the works and these would not be accepted by the editor, the withdrawal of the works would be considered, and the author would have to compensate the editor for any damages caused to third parties.

Art. 54. If there is no agreement with respect to the sales price of each copy, the editor is empowered to fix such price.

Art. 55. If the contract of edition would have a fixed term for its termination and upon expiring the editor would have some copies left (unsold) from the works, the author may buy them at cost plus ten percent. This right may be exercised within thirty days starting on the expiration of the term, after which the editor may continue selling his leftovers in the same conditions.

Art. 56. The contract of edition shall terminate, regardless of the term set forth for its duration, upon exhausting the edition.

Art. 57. The right to edit separately one or several works of the same author, does not confer to the editor the right to edit them all together. Likewise, the right to edit all together the works of one author does not confer to the editor the faculty to edit them separately.

Art. 58. Any person who publishes one of the works is obligated to show in a visible place, in all the copies, at least the following indications:

a) Title of the work and name of the author or his pseudonym, or the expression that the work lacks an author, compiled, adapted or author of the version, if applicable;

b) The mention of reserve, with indication of the name of the copyright holder, whenever the author requires, the name of the representative company and the year of the first publication;

c) Name and address of the editor and the printer; and,

d) The registration number in the International Standard Book Number (ISBN), according to article 7 of the Law of Promotion of the Book.

Art. 59. The editor is prohibited to publish a larger number of copies than those

agreed upon with the author, and if he would do so, the author may demand the payment for the larger number of copies actually edited, without prejudice to the legal sanctions and compensations, as applicable.

Art. 60. The editor must submit to the author or his representative, under the terms of the contract, the corresponding liquidations. In any case, the author or his representative, shall be entitled to examine the sales records and vouchers of those who edit, distribute or sell printed works; such information must be obligatorily carried by the editors, distributors and sellers.

Art. 61. The bankruptcy of the editor does not produce the resolution of the contract, unless the printing of the works would have not started. The rights of the bankrupt editor cannot be transferred if this would damage the author or the diffusion of the works.

Art. 62. The above dispositions shall apply to any contract of edition for musical works, except if the nature of the works exploitation would exclude them.

Art. 63. Unless there is an expressed agreement to the contrary, the editor or subeditors or licensees, as applicable, are entitled to authorize or prohibit the inclusion of the works in phonograms, their synchronizing with publicity purposes or any other form of exploitation similar to those authorized by the contract of edition; without prejudice to the copyright and the obligation to pay in his favor the remuneration agreed upon in the contract, once the editorial share has been discounted.

Art. 64. It is the obligation of the author to guarantee the authorship and originality of the works.

THREE - PHONOGRAPHIC INCLUSION CONTRACTS

Art. 65. The contract of phonographic inclusion is the one in which the author of a musical work or his representative, or the editor of the corresponding collective action company, authorizes to a producer of phonograms, in exchange for a remuneration, to record or fix a work for reproduction on a phonograph disc, a magnetic tape, a digital support or any other analogous device or mechanism, with the purpose of reproduction and sale of copies.

Art. 66. Unless there is an agreement to the contrary, the remuneration of the author shall be proportional to the value of the copies sold and shall be paid periodically.

Art. 67. The producers of phonograms shall include in the supporting material of the phonograms, the following:

a) The title of the works, names of authors or their pseudonyms and the author of the version, if any;

b) The names of the interpreters. The orchestral or coral names shall be

mentioned as such or by the name of the conductor, as applicable.

c) The mention of the right of reserve with the symbol (P) (the letter P printed within a circle) followed by the year of the first publication;

d) The registered name of the phonogram producer, or his identifying trade mark;

e) The phrase: "Copyright and producer's rights are reserved. Reproduction, renting or public loan, or any other form of public communication of the phonogram are hereby prohibited"; and,

f) Obligatorily, the phonogram must show in print the edition order number.

The indications which for lack of an adequate place would not be possible to show them in the labels of the copies, must be obligatorily printed on the envelope, cover o attached pamphlet.

Art. 68. The dispositions contained in articles 64 and 66 shall apply as pertinent to the literary work to be employed as a text for a musical work or recital or reading for its fixation on a phonogram, with the purpose of reproduction and sale.

FOUR - REPRESENTATION CONTRACTS

Art. 69. Representation contract is that one by which the title holder of rights over an intellectual creation transfers or authorizes a natural or juridical person the right of representing the works in the agreed upon conditions.

These contracts may be performed for a determined term or for a determined number of representations or public performances.

The dispositions related to the representation contract are applicable to the other modalities of public communication, as pertinent.

Art. 70. When the author's share has not been determined in the contract, it shall correspond to him a minimum of ten per cent of the value of entrance tickets to each performance, and twenty per cent of the first time show.

Art. 71. If the showman would not pay the share corresponding to the author, the competent authority, at a petition from the title holder or his representative, shall order the suspension of the works performances or the withholding of the entrance tickets monies.

In case that the same showman represents other plays from different authors, the authority shall order the withholding of the amounts exceeding the collection, after satisfying the copyright of such works and corresponding expenses, up to covering the amount owed to the unpaid author. In any case, the author shall be entitled to resolve the contract and withdraw the works from the showman's possession, as well

as to exercise all other legal actions, as applicable.

Art. 72. In the absence of a contractual stipulation, it is presumed that the showman acquires the exclusive right for the performance of the works during six months starting on their first show and, without exclusivity for another six months.

Art. 73. The showman shall terminate the contract, losing the advance payments made by the author, if the works would stop its performances due to public rejection during the first three shows, or by acts of God, force majeure, or any other circumstances beyond control.

Art. 74. The competent public officials shall not allow public auditions or shows without the presentation of authority from the title holders of the works.

FIVE - RADIO BROADCASTING CONTRACTS

Art.75. A radio broadcasting contract is that one by which the title holder of the rights over an intellectual creation authorizes the transmission of his works to a radio broadcasting organization.

These dispositions shall apply also to transmissions made by wire, cable, fiber optics, or other analogous procedure.

Art. 76. The authorization for the transmission of any works does not comprise the right to repeat the emission nor to exploit it publicly, unless there is an agreement to the contrary.

For the transmission of a work abroad the expressed authority of the title holders shall be required.

SIX - CONTRACTS FOR AUDIOVISUAL WORKS

Art. 77. In order to exploit audiovisual works in video cassettes, movies, television, radio broadcasting or any other means, a previous agreement with the authors or interpreting artists, shall be required, or in its case, the agreement made with corresponding action companies.

Art. 78. The distribution or exhibit of audiovisual works cannot be negotiated unless a previous agreement has been made with the collective action companies and interpreting artists. This agreement must fully guarantee the payment of the corresponding exhibition rights.

SEVEN - PUBLICITY CONTRACTS

Art. 79. Publicity contracts are those whose purpose is the exploitation of works for publicity (advertising) or identification of advertisements or propaganda through any

means of diffusion.

Without prejudice to what the parties stipulate, the contract shall implement the diffusion of advertisements or propaganda up to a maximum period of six months starting on the first communication, and shall be redistributed separately during each additional period of six months.

The contract must precise the material support for the reproduction of the works, when we consider the right of reproduction, as well as the number of copies including in the edition, as applicable. Each additional edition shall require an expressed agreement.

The dispositions relative to contracts of edition, phonographic inclusion and, audiovisual production shall be applicable to these contracts as a supplement.

SECTION VII - LIMITATIONS AND EXCEPTIONS TO THE AUTHOR'S PATRIMONIAL RIGHTS
PARAGRAPH ONE - DURATION

Art. 80. The patrimonial right lasts during the entire life of the author and seventy years after his death, regardless of the country of origin of the works.

In the works in collaboration, the period of protection shall run from the last coauthor's date of death.

When we are dealing with posthumous works, the term of seventy years shall start on the author's date of death.

An anonymous work whose author would not be disclosed during the term of seventy years starting on the date of the first publication shall pass to public domain. If before this term has transpired the name of the author is revealed, dispositions in paragraph first of this article shall apply.

If the identity of the author of a work published under a pseudonym is not known, such work shall be considered anonymous.

If a collective work would be known by the parties, the period of protection shall start on the date of publication of the last supplement, part or volume.

Art. 81. If the ownership title of a work corresponds to a juridical person from its creation, the term of protection shall be of seventy years starting on the date of performance, disclosure or publication of the work, whichever is the last.

PARAGRAPH TWO - PUBLIC DOMAIN

Art. 82. After the terms of protection provided in this Section have lapsed, the works shall pass to public domain and, in consequence, may be benefit to any person

whatsoever, respecting the corresponding moral rights.

PARAGRAPH THREE - EXCEPTIONS

Art. 83. Provided honest use is respected and the normal exploitation of the works does not cause any damage to the title holder of the rights, the following acts shall be legal, exclusively, and will not require the authorization of the title holder of rights, nor are subject to any remuneration:

a) The inclusion of a work proper and fragments of others strange to the nature of that written, sound, or audio visual, as well as isolated plastic, photographic, figurative or analogous, provided they are works already disclosed and their inclusion is made as a notation for critical analysis, comment or judgement. Such use may only be made for teaching or research application, in the measure justified by the purpose of such incorporation and indicating the source and name of the author and the work used;

b) The performance of musical works in official acts of institutions of the State or religious ceremonies for free attendance, provided the participants in the communication do not receive any specific remuneration for their intervention in such act;

c) Public reproduction, distribution and communication of articles and commentaries over current events of collective interest, diffused by means of social communication, provided the source and name of the author are mentioned, if included in the original article, and the reserve of rights does not appear in its origin;

d) The diffusion by the press or radio broadcasting with information purposes of conferences, speeches and similar works disclosed in assemblies, public meetings or debates over subjects of general interest;

e) The reproduction of daily news or diverse facts whose character is for simple press releases, either published or radio broadcasted, provided its origin is indicated;

f) The reproduction, communication and distribution of the works which are located permanently in public places, by means of photography, painting, drawings or any other audiovisual process, provided the name of the author of the original works and the place of their location are indicated; and, there would be strictly a purpose for diffusion of arts, science and culture;

g) The reproduction of only one copy of some work which is found in the permanent collection of libraries or files, with the exclusive purpose of replacing it if necessary, provided such work is not found outside;

h) The ephemeral recordings which are destroyed immediately after their

broadcast;

i) The reproduction or communication of some work disclosed for legal or administrative action;

j) The parody of a disclosed work, while it does not imply any risk of confusion with the original, nor would it damage the work or the author's reputation, or the interpreter artist or performer, as applicable; and,

k) The lessons and conferences presented at universities, colleges, schools and centers of education and training
in general, which may be copied and collected by the assistants for their personal use.

Art. 84. The material property of a letter belongs to the person to whom it was addressed, but his author preserves over such letter all intellectual rights. The persons to whom letters have been addressed, if they would not obtain the authorization for disclosure from the author or his heirs or representatives after employing all reasonable efforts, may request from a judge the authority for disclosure, in the manner and extension necessary to defend their personal honor.

CHAPTER II
ADJOINING RIGHTS - PARAGRAPH ONE
GENERAL DISPOSITIONS

Art. 85. The protection of adjoining rights shall not affect in any way the copyrights, nor may be interpreted as lack of such protection.

Art. 86. The title holders of adjoining rights may invoke the protection of rights acknowledged in this Section and dispositions in this Book, except those whose nature excludes such application, or respect to which this Section contains an expressed disposition.

PARAGRAPH TWO - ARTISTS, INTERPRETERS AND PERFORMERS

Art. 87. Independent of patrimonial rights and even after their transfer, the artists, interpreters or performers shall enjoy with respect to their live performances or those fixed in phonograms the right to be identified as such, unless that their omission is determined by the manner used in the performance; as well as the right to oppose to any distortion, mutilation or other modification of the performance, in the measure that such actions may be damaging for their reputation. These moral rights are extinguished at the death of the title holder.

Art. 88. The artists, interpreters and performers have the right to authorize or prohibit the communication to the public of their live interpretations or performances, as well as the fixing of their interpretations and reproduction of such performances,

by any means or procedure.

Art. 89. Notwithstanding the dispositions in the preceding article, the artists, interpreters and performers may not oppose public communication of their performances or representations when these constitute by themselves a radio broadcaster performance, or they are made from a fixing with their previous consent and published with commercial purposes.

Without prejudice to the exclusive right which correspond to them by the above article, in the cases set forth in the preceding paragraph, the artists, interpreters or performers are entitled to receive a remuneration for public communication of a phonogram containing their interpretations or performances.

Unless there is an agreement to the contrary, the remuneration to be collected according to the previous paragraph shall be shared equally among the producers of phonograms and the artists, interpreters or performers independently of the author's economic rights already set forth in the articles referring to the author's Patrimonial Rights, according to international conventions.

Art. 90. The artists, intepreters and performers who collectively participate in the same performance must appoint a representative to guarantee the application of the rights acknowledged in this Paragraph. Lacking this appointment, they shall be represented by the conductor of the vocal or instrumental group who participated in the performance.

Art. 91. The duration of the protection of the rights belonging to the artists, interpreters and performers, shall be of seventy years, starting on the first of January of the year following that on which the interpretation or performance took place, or of its fixation, as applicable.

PARAGRAPH THREE - PRODUCERS OF PHONOGRAMS

Art. 92. The producers of phonograms are title holders of the exclusive right to conduct, authorize or prohibit:

a) The direct or indirect reproduction of their phonograms, by any means or fashion;

b) The distribution to the public;

c) The importation by any means of reproduction of phonograms, either legal or not.

Art. 93. The exclusive licenses granted by the producer of phonograms must specify the rights whose exercise is authorized by the licensee, in order to legitimate the intervention of the licensee before the corresponding administrative and judicial authorities.

Art. 94. Then producers of phonograms have also the exclusive right to produce, authorize or prohibit public communication either by wire or wireless.

Art. 95. A common action company may be established to collect remunerations corresponding to the authors, producers of phonograms and artists, interpreters and performers, by the public communication of their works, interpretations or plays and phonograms, respectively.

Art. 96. The duration of the protection of rights of the producer of phonograms, shall be of seventy years starting on the first of January of the year following the date of first publication of the phonogram.

PARAGRAPH FOUR - RADIO BROADCASTING ORGANIZATIONS

Art. 97. Radio broadcasting organizations are title holders of the exclusive right to conduct, authorize or prohibit:

a) The retransmission of their emissions, by any means or procedure;

b) The fixation and reproduction of their emissions, including any isolated image, when such has been made accessible to the public for the first time through a radio broadcasting emission; and,

c) The communication to the public of their emissions when these are made in places accessible to the public through the payment of admission fees.

Art. 98. The emission referred to in the previous article comprises the production of program carrier signals destined to a radio broadcasting satellite, as well as the diffusion to the public by an entity emitting or diffusing emissions received from others through any of the aforementioned satellites.

Art. 99. Without authority of the respective radio broadcasting organization, it would not be legal to decodify signals from the satellite carrying programs, their reception with a profit aim or their diffusion, nor to import, distribute, sell, lease or in any way offer to the public devices or systems capable to decodify such signals.

Art. 100. To the effect of enjoying and exercising the rights set forth in this Paragraph, an analogous protection is recognized, as it may correspond, to the stations transmitting programs to the public by means of wire, cable, fiber optics or any other similar procedure.

Art. 101. The duration of the protection of rights for radio broadcasting organizations shall be of seventy years starting on the first of January of the year following the date of the first emission or transmission.

PARAGRAPH FIVE - OTHER ADJOINING RIGHTS

Art. 102. The producer of moving images, with or without sound, which are creations susceptible to be qualified as audiovisual works, shall have the exclusive right to conduct, authorize or prohibit the reproduction, public communication or distribution, including photographs made in the process of production of the audiovisual recording. This right shall last seventy years starting on the first of January of the year following the year of its first performance, disclosure of publication, as applicable.

Audiovisual recordings are the fixations of moving images, with or without sound, which are susceptible to be qualified as audiovisual works.

Art. 103. Whoever makes a simple photograph or other fixation obtained by an analogous procedure, which does not have the characteristics of photographic works, shall enjoy the exclusive right of conducting, authorizing or prohibit its public reproduction, distribution and communication in the same terms as the authors of photographic works. This right shall last twenty five years starting on the first day of the year following the date of its making, disclosure or publication, as applicable.

Art. 104. Whoever publishes for the first time an inedit work which is in the public domain, shall have over it the same rights of exploitation which would have corresponded to the author, for a period of twenty five years starting from the first day of the year following the publication.

PARAGRAPH SIX - REMUNERATION FOR A PRIVATE COPY

Art. 105. The private copy of works fixed in phonograms or videograms, as well as the reprographic reproduction of printed literary works shall be subject to a compensatory remuneration according to the dispositions of this Paragraph. This remuneration shall be caused by the fact of the distribution of supports susceptible to incorporate an audiovisual sound fixation or of phonograms or videograms reproduction equipment; or of equipment for reprographic reproduction.

The remuneration shall correspond in equal parts to the authors, artists, interpreters and performers and, to the producers of phonograms in the case of phonograms and videograms and, likewise it shall correspond, in equal parts to the authors and editors in the case of literary works.

The compensatory remuneration for private copy of phonograms and videograms shall be collected by a single and common collection entity of authors, interpreters and producers of phonograms and videograms, whose social object shall be exclusively the collective collection of the compensatory remuneration for private copy. Likewise, the collection of the compensatory rights for reprographic reproduction shall correspond to a single and common collection entity of authors and editors.

These action entities shall be authorized by the IEPI and shall observe the dispositions of this Law.

Art. 106. The compensatory remuneration provided for in the previous article shall be paid by the manufacturer or importer at the time of placing into the national market:

a) The tapes and other supporting materials susceptible to incorporate a sound or audiovisual fixation; and,

b) The reproducing equipment.

The percentage amount of the compensatory remuneration for private copy must be calculated over the price of the reproducing supports or equipment, which shall be fixed and set forth by the IEPI Management Council.

Art. 107. The natural or juridical person who offers to the public supports susceptible to incorporate a sound or audiovisual fixation or reproducing equipment which have not paid the compensatory remuneration, cannot place into circulation such goods and solidarily respond with the manufacturer or importer for the payment of said remuneration, without prejudice that the IEPI, or the competent judges, as applicable, would withdraw from the business the goods indicated until the solution of the corresponding remuneration.

Lack of payment of the compensatory remuneration shall be sanctioned by a fine equivalent to three hundred percent of what would be due for payment.

The producer of phonograms or title holders of rights over the works to which this paragraph makes reference, or their licensees, are not subject to this remuneration, for the imports they would make.

Art. 108. By private copy shall be understood the domestic copy of phonograms or videograms, or the reprographic reproduction of a single copy made by the original acquirer of a phonogram or videogram or literary work in legal circulation, exclusively destined for non profit use by the natural person who makes it. Said copy cannot be used in any other way contrary to honest usage.

The private copy made on supports or with reproducing equipment which has not paid the compensatory remuneration constitutes a violation of the copyright and corresponding adjoining rights.

CHAPTER III
COLLECTIVE ACTION COMPANIES

Art. 109. Collective action companies are the juridical persons in private law, without profit purposes, whose social object is the collective action of patrimonial rights for copyrights or adjoining rights, or both.

The affiliation of the title holders of copyrights or adjoining rights to a collective action

company is voluntary.

Art. 110. The collective action companies are obligated to manage the rights entrusted to them and shall be legitimated to exercise same under the terms provided in their own bylaws, in the mandates granted and in the contracts entered into with foreign entities, as applicable.

The represention conferred upon according to the prior paragraph, shall not reduce the faculty of the title holders of copyrights to exercise directly the rights acknowledged in this Book.

Art. 111. If there would be two or more collective action companies by gender of the works, a single collection entity must be set up, whose social object would be exclusively the collection of patrimonial rights by delegation from the constituents. If the action entities would not agree on the formation, organization and representation of a collection entity, its designation and conformation shall correspond to the National Bureau on Copyrights.

Art. 112. The collective action companies shall be authorized by the National Bureau on Copyrights and shall be subject to its vigilance, control and intervention. The National Bureau on Copyrights may, officially or on a petition from a party, intervene in a collective action company, if such entity does not comply with the prescriptions in this Chapter and its Regulations. Once the intervention is produced, the acts and contracts must be authorized by the Director of the National Bureau on Copyrights to be valid. The requirements for the authorization and functioning of collective action companies are as follows:

a) That the bylaws of the applying entity comply with the requirements set forth in this Chapter; and,

b) That the data furnished and the information checked show that the applying entity complies with the necessary conditions to assure the efficient management of rights whose action is entrusted to same.

Art. 113. Without prejudice to what is set forth in the applicable legal dispositions, the bylaws of the action companies shall, especially, prescribe:

a) The conditions for admission as partners to the applying title holders and that they should accredit their qualifications as such; and,

b) That the general assembly, integrated by the company members, is the supreme government organization and, shall be previously authorized to approve regulations on fees and resolve over the percentage destined to overhead expenses. This percentage in no case may exceed thirty percent of the collections, the difference necessarily must be distributed equally among the various title holders of rights, in proportion to the actual exploitation of the works, interpretations or performances, or phonograms, as applicable.

Art. 114. The collective action companies are obligated to publish annually their financial statements through a means of communication having wide national circulation.

Art. 115. If the action company would not comply with its objectives or with the dispositions in this Chapter, the National Bureau on Copyrights may suspend the authorization for its functioning, in which case the action company shall preserve its juridical personality only for the purpose of correcting such non compliance. If the company would not correct such non compliance within a maximum term of six months, the Bureau shall revoke the authorization for the company to operate.

Without prejudice to the above, in all cases of suspension of the operational authority, the company may, under control of the National Copyright Bureau collect the patrimonial rights of the authors represented in that company.

The product of the collection shall be deposited in a separate account to the name of the National Bureau on Copyrights and, shall be returned to the company once a resolution authorizing again its operation is passed.

Art. 116. The collective action companies shall set up the fees related to usage licenses on the works or production included in their repertoire. The fees set forth by collective action companies shall be published in the Official Register through a disposition from the National Bureau on Copyrights, provided the formal requirements set forth in the bylaws and this Chapter for the adoption of fees have been complied.

Art. 117. The collective action companies may negotiate with the users organization and enter into contracts with them setting forth the fees. Anyone interested may observe such fees through a written application to the corresponding action company.

Art. 118. All radio broadcasting organizations and in general whoever habitually makes any public communications acts, must produce catalogs, records or monthly invoices showing by order of diffusion the title of the works disseminated and the names of the authors or title holders of corresponding copyrights and adjoining rights and, would send them to each of the collective action companies and the single collection entity for the rights of public communication on the purposes set forth in this Law.

The administrative, police or municipal authorities, who exercise in each case the functions of vigilance and inspection through which they shall know about the activities causing remunerations indicated in the previous article, are obligated to report same to the action companies.

Art. 119. Whoever exploits a work or production without obtaining the corresponding

right or would have been granted the respective usage license, must pay as compensation a surcharge of fifty percent of the fee, calculated for all the time when the exploitation was in progress.

Similar dispositions apply to the collective action companies in case they should have granted licenses over works which they do not represent; in any case they should guarantee the licensee the use and peaceful enjoyment of the corresponding rights.

BOOK II
INDUSTRIAL PROPERTY
CHAPTER I
PROTECTION OF INVENTIONS

Art. 120. The inventions in all fields of technology, are protected by the concession of patents of invention, and models of utility.

Any protection to industrial property shall guarantee the guardianship of the biological and genetical patrimony of the country; by virtue of which, the concession of patents of invention or procedures involving elements of such patrimony must be based on the fact that they have been legally acquired.

CHAPTER II
PATENTS OF INVENTION
SECTION I - PATENT REQUIREMENTS

Art. 121. A patent shall be granted for any invention, being of products or procedures, in all fields of technology, provided it would be new, possesses an inventive level and be susceptible for industrial application.

Art. 123. It would be considered that an invention has an inventive level, if for a person normally versed in a job in the corresponding technical matter, this invention would have not resulted obvious nor would have derived in an evident manner from the technical status.

Art. 124. It shall be considered that an invention is susceptible for industrial application when its object may be produced or used in any productive activity, including services.

Art. 125. The following shall not be considered as inventions:

a) The scientific discoveries, principles and theories and mathematical methods;

b) The materials already existing in nature;

c) Literary and artistic works or any other aesthetic creation;

d) The plans, rules and methods for the exercise of intellectual activities, for games or economical and commercial activities, as well as computer programs or logical supports meantime they are not a part of an invention susceptible for industrial application; and,

e) The forms of presenting information.

Art. 126. Expressly excluded from patentability are:

a) The inventions whose commercial exploitation must be necessarily impeded to protect public order or morality, including the protection of life or health of persons or animals or to preserve plant varieties or to avoid serious damage to the environment or ecosystem;

b) The methods for diagnosis, therapeutical and surgical for the treatment of persons or animals; and,

c) The plants and animal races, as well as the procedures essentially biologic to obtain plants or animals.

For the purposes set forth in item a), the following shall be considered contrary to morals and, hence, are not patentable:

a) Clonation procedures for human beings;

b) The human body and its genetic identity;

c) The use of human embryos for industrial or commercial purposes; and,

d) The procedures for the modification of genetic identity of animals when they cause pain without obtaining any substantial medical benefit for human beings or animals.

SECTION II - TITLE HOLDERS

Art. 127. The right to a patent belongs to the inventor. This right is transferrable by an act between living persons and transmittable after death.

The title holders of the patents may be natural or juridical persons.

If several persons have jointly invented, the common right corresponds to all of them or their representatives. It shall not be considered an inventor nor a coinventor whoever has limited itself to render aid in the performance of the invention, without contributing any inventive activity.

If several persons make the same invention, independently one from the other, the patent shall be granted to the person who submits the first application or that invokes priority as the oldest date, or to his rights holder.

Art. 128. Whoever has a legitimate interest may claim the quality of a true title holder of a patent application to the National Industrial Property Bureau according to the procedure set forth for the oppositions and, before a competent judge, at any time and up to three years after patent was granted.

Art. 129. The right to a patent over an invention developed to comply with a contract belongs to the mandatory or employer, unless there is a stipulation to the contrary.

The same disposition applies when a work contracted does not demand from the employee the exercise of his inventive activity, if such employee has made the invention using data or means placed at his disposal by reason of his employment.

In the case described in the previous paragraph, the inventor employee shall have a right to a single and fair remuneration where the information and means supplied by the company and the personal contribution of the employee shall be taken into account, as well as the industrial and commercial importance of the patented invention, which in lieu of an agreement between the parties shall be fixed by the competent judge, prior a report from the IEPI. In the circumstances described in paragraph one of this article, the inventor employee shall have a similar right when the invention would have exceptional importance and exceeds the implicit or explicit object of the work contract. The right to the remuneration provided in this paragraph is non renounceable.

Lacking a contractual stipulation or agreement between the parties as to the amount of such retribution, this shall be fixed by the competent judge prior a report from the IEPI. Such retribution is non renounceable.

In the case of inventions made during the course or on occasion of academic activities of universities or educational centers, or using their means or under their direction, the title holding of the patent shall correspond to the university or educational center, unless there is a stipulation to the contrary. Whoever has conducted the research shall have a right to the retribution provided for in the previous paragraphs.

If the inventions occurred under a labor relationship when the employer is a juridical person in the public sector, this person may transfer part of the economic benefits of the innovations to the benefit of the inventor employees, to stimulate the activity of research. The entities receiving financing from the public sector for their research must reinvest part of the royalties they receive for the commercialization of such inventions, with the purpose of generating a continuous flow of funds for research and stimulate the researchers, sharing with them the revenue from innovations.

Art. 130. The inventor shall be entitled to be mentioned as such in the patent or may equally oppose to that mention.

SECTION III - CONCESSION OF PATENTS

Art. 131. The first application for a patent of an invention validly submitted in a country member of the World Trade Organization (WTO), of the Andean Community, the Paris Convention for the Protection of Industrial Property, as well as another treaty or convention in which Ecuador is a part and, that recognizes a right of priority with the same effects than the one provided in the Convention of Paris or in other country granting a reciprocal treatment to the applications originating from the member countries of the Andean Community, shall confer upon the applicant or his representative the right of priority for a term of one year, starting on the date of such application, to request a patent in Ecuador over the same invention.

The application submitted in Ecuador may not claim priorities over subjects not included in the priority application, even though the text of the descriptive memory and claims may not necessarily coincide.

Art. 132. The application to obtain a patent of invention shall be submitted to the Industrial Property National Bureau and shall contain therequisitess set forth in the Regulations.

Art. 133. The following must be attached to the application:

a) Title or name of the invention with a description of same, a summary of same, one or more claims and the necessary plans and drawings;

   When the invention refers to biological material, which may not be duly detailed in the description, such material shall be deposited in an institution authorized by the IEPI for that purpose;

b) The voucher for payment of the corresponding fees;

c) Coy of the patent application submitted abroad, in case that priority is claimed; and,

d) All other requisites determined by the Regulations.

Art. 134. The Industrial Property National Bureau, at the time of reception, unless there would not be accompanying documents referred to in items a) and b) of the previous article, shall certify the date and time when the application was submitted and shall assign a number of order which must be successive and continuous . If such documents would be lacking, the application shall not be admitted to the process nor a date of presentation shall be recorded.

Art. 135. The description must be sufficiently clear and complete to allow a capable person on the corresponding technical matter to be able to execute same.

Art. 136. The application for a patent may only comprise one invention or group of interrelated inventions, in such a way that they form a single invention concept.

Art. 137. The applicant, before the publication referred to in Art. 141 may fraction, modify, precise or correct the application, but may not change the object of the invention nor enlarge its contents for national disclosure.

Each fractioned application shall benefit from the date of presentation and, in such case, the date of priority of the divided application.

Art. 138. The National Industrial Property Bureau or the applicant of a patent of invention may suggest that the petition converts into a patent application for model of utility or vice versa.

The converted application shall maintain the date of presentation of the initial application and shall be subject to the process provided for the new modality.

Art. 139. If the application is desisted before its publication, that file shall be kept in reserve.

Art. 140. The National Industrial Property Bureau shall examine within fifteen working days following its representation, if the application adjusts to the formal aspects indicated in this Chapter.

If the examination determines that the application does not comply with such requirements, the National Industrial Property Bureau shall inform the applicant in order for him to complete it within a term of thirty days starting from the date of notification. Such term shall be extendable for only one time and for a like period, without losing its priority. After that term lapses without a reply from the applicant, the National Industrial Property Bureau shall declare such application abandoned.

Art. 141. An extract of the application shall be published in the Intellectual Property Gazette corresponding to the following month of the completed application, unless the applicant would request that the publication be deferred up to eighteen months.

Meantime no publication is made, the file shall be reserved and may only be examined by third parties with the consent of the applicant or when the applicant would have started judicial or administrative legal action against third parties based on his application.

Art. 142. Within the term of thirty working days following the date of publication, whoever has a legitimate interest may present for one time only, well based oppositions which may disqualify the patentability or titleship of the invention.

The term indicated in the previous paragraph may be extended for another equal one, by petition of the party interested in submitting an opposition, if it is stated that time is needed for an examination of the description, claims and background of the application.

Whoever submits a baseless opposition shall be liable for damages filed before a competent court.

Art. 143. If within the term provided in the previous article, oppositions shall be presented, the National Industrial Property Bureau shall notify the petitioner in order that within thirty working days starting on the notification, an extendable term for only one time and for the same period of time, would make his arguments, submit documents or rewrite the claims or description of the invention.

Art. 144. The National Industrial Property Bureau shall obligatorily make an examination over the patentability of the invention, within the term of sixty days starting on the expiration of the terms contained in articles 142 and 143. For such examination, it may ask for a report from experts or from scientific or technological organizations which are considered capable, in order to issue their opinions on newness, inventive level and industrial application of the invention. Likewise, when convenient, may require reports from competent national offices or from abroad. All the information shall placed to the knowledge of the applicant to guarantee his right to be heard in the terms set forth in the Regulations.

The National Industrial Property Bureau may know the results of such examinations as a technical report to accredit compliance with the conditions for patentability of the invention.

The technical reports issued by the competent offices from international countries or organizations, with which the IEPI has signed agreements for cooperation and technical assistance, shall be admitted by the National Industrial Property Bureau to the effect of granting the patent.

Art. 145. If the final examination would be favorable, the title of concession to the patent shall be granted. If it would be partially unfavorable, the patent shall be granted only for the claims accepted, through a resolution duly motivated. If it would be unfavorable, it shall be denied, also through a motivated resolution.

Art. 146. The patent shall have a term of duration of twenty years, starting on the date of presentation of the application.

Art. 147. For the order and classification of patents, the International Classification of Patents of Intervention of the Strasbourg Arrangement of 28 March 1971 and its updated changes shall be used.

The class or classes corresponding to a determined invention shall be set by the National Industrial Property Bureau in the title of concession, without prejudice that the indication may have been made by the applicant.

SECTION IV - RIGHTS CONFERRED BY THE PATENT

Art. 148. The scope of protection conferred by the patent shall be determined in line

with its claims. The description and drawings or plans and any other elements deposited at the National Industrial Property Bureau shall serve to interpret the claims.

If the object of the patent is a procedure, the protection conferred by the patent shall extend to the products obtained directly from that procedure.

Art. 149. The patent confers upon its title holder the right to exploit the invention exclusively and impede that third parties would perform without his consent any of the following acts:

a) Manufacture the patented product;

b) Offer for sale, sell or use the patented, imported, or stored product for any of these purposes;

c) Employ the patented procedure;

d) Execute any of the acts indicated in items a) and b) with respect to a product obtained directly thorough the patented procedure;

e) Deliver, or offer means to put into practice the patented invention; and,

f) Any other act or fact that intends to place at the public disposition all or part of the patented invention or its effects.

Art. 150. The title holder of an invention may not exercise the right prescribed in the previous article, in any of the following cases:

a) When the use would take place in a private environment, and on a non commercial scale;

b) When the use would take place with non profit ends, an experimental, academic or scientific level; or,

c) When it deals with the importation of a patented product which has been placed into trade in any country, with the consent of the title holder of a license or of any other person authorized for such purpose.

SECTION V - VOIDANCE OF THE PATENT

Art. 151. Through the recourse of review, the Committee of Intellectual Property of the IEPI, officially or by petition from a party, may declare the voidance of registration of a patent, in the following cases:

a) If the object of the patent does not constitute an invention, according to this Chapter;

b) If the patent was granted for a non patentable invention;

c) If it was granted in favor of who is not the inventor;

d) If a third party in good faith, before the date of presentation of the application for concession of the patent or claimed priority, was in the country manufacturing the product or using the procedure for commercial purposes or would have made serious preparations to carry on manufacturing or use for such purposes; and,

e) If the patent would have been granted with any other violation of the Law which substantially had induced to its concession or would have been obtained on the basis of false or erroneous data, information or description.

Art. 152. The competent judge may declare the voidance of the patent which may be in any of the cases described in the previous article, by virtue of the demand submitted after the term set forth in the Law has lapsed for the exercise of the recourse of review and before ten years have lapsed from the date of the concession of the patent, unless that the recourse of review would have been filed and then it would have been definitely denied.

SECTION VI - CADUCITY OF THE PATENT

Art. 153. In order to maintain the patent current or in its case, the application for the patent in progress, the fees set forth must be paid according to this Law.

Before declaring the caducity of the patent, the National Industrial Property Bureau shall grant a term of six months in order that the interested party complies with the payment of the fees referred in the previous paragraph.

SECTION VII - OBLIGATORY LICENSES REGIME

Art. 154. Prior a declaration of the President of the Republic about the existence of reasons of emergency of public interest or national security and, only while these reasons remain, the State may submit the patent to an obligatory license at any time and in such case, the National Industrial Property Bureau may grant the licenses applied for, without prejudice to the rights of the tiltle holder of the patent to be remunerated according to dispositions in this Section. The title holder of the patent shall be notified previously to the concession of the license, in order that he makes his rights worthwhile.

The decision for the concession of the obligatory license shall establish the scope or extension of same, specifying in particular the period of the concession, the object of the license and the amount and conditions for payment of royalties, without prejudice to provisions in Art. 156 of this Law.

The concession of an obligatory license by reasons of public interest does not

impede the right of the title holder of the patent to continue its exploitation.

Art. 155. By petition from a party and before a legal judgement, the National Industrial Property Bureau may grant obligatory licenses when practices legally declared contrary to free competition are submitted, particularly when they constitute an abuse of the dominant position in the market by the title holder of the patent.

Art. 156. The granting of obligatory licenses shall attain in any case to the following:

a) The potential licensee must prove that he has intended to obtain the authorization of the title holder of the rights in reasonable commercial terms and conditions and, that these intents have not been replied or have been negatively answered, within a term of less than six months starting on the formal application wherein such terms and conditions have been sufficiently included to allow the title holder of the patent to form a criteria;

b) The obligatory license shall not be exclusive and cannot be transferred nor be the object of a sublicense but only with the party of the company which allows its industrial exploitation and with the consent of the title holder of the patent; this must appear in writing and be registered at the National Industrial Property Bureau;

c) The obligatory license shall be granted principally to supply the internal market when lacking production or imports to the national territory, or to the territory of a member country of the Andean Community or of any other country with which Ecuador maintains a customs arrangement or any other equivalent agreement;

d) The licensee must recognize to the benefit of the title holder of the patent the royalties for the non exclusive exploitation of the patent, in the same commercial terms that would have corresponded in the case of a voluntary license. These terms may not be lesser than those proposed for the potential licensee according to item a) of this article and, notwithstanding an agreement between the parties, after the decision from the National Industrial Property Bureau has been notified about the concession of the license;

e) The license may be revoked immediately if the licensee does not comply with the payments and other obligations; and,

f) The obligatory license shall be revoked, officially or by petition motivated by the title holder of the patent, if the circumstances which originated it disappear, without prejudice to the adequate protection of the legitimate interest of the licensee.

Art. 157. By petition of the title holder of the patent, or of the licensee, the conditions of the licenses may be modified by the National Industrial Property Bureau, when justified by new facts, and in particular, when the title holder of the patent would grant another license in more favorable conditions than those of the obligatory

licensee.

Art. 158. Licenses which do not comply with dispositions in this Section shall be without effect.

Regarding voluntary licenses dispositions in Book III, Section V - Industrial Property Acts and Contracts and Vegetal Obtentions shall apply.

CHAPTER III
MODELS OF UTILITY

Art. 159. A patent of a model of utility shall be granted to any new form, configuration or disposition of elements of some artifact, tool, instrument, mechanism or other object or some of its parts which allow a better or different operation, usage or manufacturing of the object which incorporates same or provide some utility, advantage or technical effect which it did not have before; as well as any other new creation susceptible of industrial application which does not enjoy the sufficient inventive level to permit the concession of the patent.

Art. 160. The procedures and subjects excluded from protection as patents of invention may not be patented as models of utility. Nor shall be considered models of utility the sculptures, architectural works, paintings, engravings, stampings or any other object of purely aesthetic character.

Art. 161. The dispositions over patents of invention shall be applicable to models of utility, as pertinent.

Art. 162. The term of protection for the models of utility shall be of ten years starting on the date of presentation of the patent application.

CHAPTER IV - CERTIFICATES OF PROTECTION

Art. 163. Any inventor who has under development a project of invention and requires experimenting or building any mechanism which obligates him to make public his idea, may apply for the certificate of protection conferred directly by the National Industrial Property Bureau, for the term of one year preceding the date of presentation of his patent application.

The title holder of the certificate of protection shall enjoy the right of priority to submit his patent application within the year following the date of concession of the certificate.

Art. 164. The application shall be submitted to the National Industrial Property Bureau and shall contain the requirements determined in the Regulations. The application shall be accompanied by a description of the project of invention and the other documents needed for its interpretation.

Provided the application complies with the demanded requirements, the National Industrial Property Bureau shall grant the certificate of protection on the same date of its presentation.

CHAPTER V - INDUSTRIAL DRAWINGS AND MODELS

Art. 165. The new industrial drawings and models shall be registered.

As an industrial drawing shall be considered any combination of lines or colors and as an industrial model any plastic form, associated or not to lines and colors, which serves as a type for the manufacturing of an industrial product or craftsmanship and that will be different from similar products by its own configuration.

Industrial drawings and models whose aspect would be entirely determined by technical or functional considerations, not incorporating any contribution of the designer to give them special appearance without changing its destination or purpose shall not be registered.

Art. 166. Industrial drawings and models are not new if before the date of the application or priority validly claimed, have been accessible to the public by description, usage or any other means.

There is no newness by the simple fact that the drawings or models present secondary differences with respect to other previous works or because they are destined to some other purpose.

Art. 167. The application for registration of an industrial drawing or model must contain the requirements indicated in the Regulations and shall include a graphic or photographic reproduction of the industrial drawing or model and the other documents determined in the Regulations.

The procedure for the registration of industrial drawings and models shall be established in this Law for the concession of patents, as applicable. The examination of newness shall be conducted only if there would be any oppositions.

Art. 168. The National Industrial Property Bureau shall confer a certificate of registration of the industrial drawing or model. The registration shall have a duration of ten years, starting on the date of presentation of the application.

Art. 169. For the order and classification of the industrial drawing or models, the International Classification set forth by the Arrangement of Locarno of 8 October 1968, with its modifications and updatings shall be used.

Art. 170. The first application validly submitted in a member country of the World Trade Organization, the Paris Convention for the Protection of Industrial Property, the Andean Community or of other treaty or convention of which Ecuador would be a part and which recognizes a priority right with the same effects as those provided in the Paris Convention or in any other country granting a reciprocal treatment to the

applications originating from member countries of the Andean Community, shall confer to the applicant or his representative the right of priority for the term of six months, starting on the date of that petition, to submit the application for registration in Ecuador.

Art. 171. The registration of an industrial drawing or model grants its title holder the right to exclude to third parties the use and the exploitation of the corresponding drawing or model. The title holder of the registration shall be entitled to impede to third parties without his consent to manufacture, import, offer for sale, sell, introduce into trade or use commercially products which reproduce the industrial drawing or model which presents secondary differences with respect to the protected drawing or model or whose appearance is similar.

Art. 172. Through the recourse of review, the Committee for Intellectual Property of the IEPI, officially or by petition from a party, may declare the voidance of the concession for registration of the industrial drawing or model, in the following cases:

a) If the object of registration does not constitute an industrial drawing or model according to this Law; or

b) If the registration was granted in violation of the requirements determined by this Law.

Art. 173. The competent judge may declare the voidance of an industrial drawing or model which would be in any of the cases provided in the previous article by virtue of the demand submitted after the established term lapses in the Law for the exercise of the recourse of review and before five years from the date of concession of the corresponding registration have lapsed, unless that a recourse of review had been filed previously and such recourse had been definitely denied.

CHAPTER VI - TRACING SCHEMES FOR SEMICONDUCTOR CIRCUITS (TOPOGRAPHIES)

Art. 174. Integrated circuits and tracing schemes (topographies) are protected under the terms of this Chapter. For this purpose the following definitions shall apply:

a) By "integrated circuit" is understood a product, including a semiconductor product, in its final form or in an intermediate form, in which the elements, where at least one would be an active element and, some or all the interconnections form an integrating part of the body or surface of a piece of material and is destined to perform an electronic function;

b) By "tracing scheme (topography" is understood the tridimensional disposition of the elements, expressed in any form, of which at least one would be an active element and, some or all the interconnections of an integrated circuit , or said tridimensional disposition is prepared for an integrated circuit destined to be manufactured; and,

c) It shall be understood that a tracing scheme (topography) is "fixed in an integrated circuit, when its incorporation into the product is sufficiently permanent or stable to allow that said scheme be perceived or reproduced for a period longer than a transitory duration.

Art. 175. The exclusive rights of intellectual property shall apply over the tracing schemes (topography) that are original in the sense that are the result of intellectual effort of their creator and are not current among the creators of tracing schemes (topography) and the manufacturers of integrated circuits at the moment of their creation.

A tracing scheme (topography) that consists in a combination of elements or interconnections that are current, shall also be protected if the combination, in its whole, complies with the conditions mentioned in the previous paragraph.

The tracing schemes (topography) whose design is dictated exclusively by the functions of the circuit to which is applied shall not be the object of protection.

The protection conferred by this Chapter does not extend to the ideas, procedures, systems, methods of operation, algorithms or concepts.

The right of the title holder with respect to an integrated circuit is applicable independently that the integrated circuit is incorporated into a product.

Art. 176. The natural or juridical person under whose initiative and responsibility a tracing scheme (topography) has been created or developed shall be entitled to the protection acknowledged in this Chapter. The title holders are covered from the moment of the creation.

Art. 177. The tracing schemes (topography) may be registered at the National Industrial Property Bureau. This registration shall have a declaration character and constitutes a presumption of tittleship in favor of whoever obtained the registration.

If the tracing schemes (topography) are not registered, the proof of their tittleship shall correspond to whoever alleges same.

Art. 178. Once the application for registration has been presented, the National Industrial Property Director shall analyze if it adjusts to the formal aspects demanded by the Regulations and, in particular if the information furnished is sufficient to identify the tracing scheme (topography) and shall grant without any further process the corresponding certificate of registry.

Art. 179. The protection, being that the tracing scheme (topography) had been registered or not, goes back to the date of its creation.

The duration of the protection acknowledged in this Chapter for tracing schemes (topography) shall be of ten years, starting on the date of its first commercial exploitation anywhere in the world. However, said protection shall not be less than fifteen years starting on the date of creation of the tracing scheme (topography).

Art. 180. The title holder of a tracing scheme (topography) shall have the exclusive right of performing, authorizing or prohibit:

a) The reproduction by optical, electronic means or by any other procedure known or to be known, the tracing scheme (topography) or any of its parts which comply with the requisite of originality set forth in this Chapter;

b) Exploit by any means, including importation, distribution and sale of the protected tracing scheme (topography) or an article which incorporates said integrated circuit as far as it contains a tracing scheme reproduced illegally; and,

c) Any other form of exploitation with commercial purposes or profit of the integrated circuits and tracing schemes (topography).

Any one of the acts mentioned above shall be considered illegal if they are not made with the previous consent in writing from the title holder.

Art. 181. The following acts made without authority from the title holder shall not be considered illegal:

a) The reproduction of the tracing scheme (topography) made by a third party with the only objective of research or teaching, or evaluation and analysis of concepts or techniques, diagram of flow or organization of the elements incorporated into the tracing scheme (topography) in the course of its preparation, which in turn is original;

b) The incorporation by a third party of an integrated circuit into a tracing scheme (topography) or the performance of any of the acts mentioned in the above article, if the third party on the basis of evaluation or analysis of the first tracing scheme (topography) develops a second tracing scheme (topography) which complies with the demand of originality determined in this Chapter;

c) The importation or distribution of semiconductor products or integrated circuits which incorporate a tracing scheme (topography), if such objects were sold or in another way introduced illegally into the trade by the title holder of the protected tracing scheme or with his written consent; and,

d) The importation, distribution and sale of an integrated circuit which incorporates a tracing scheme (topography) illegally reproduced or in relation with any article which incorporates such integrated circuit, when the person who perform or orders such acts does not know or would not have reasonable motives to believe, when acquiring the integrated circuit or the article which incorporates such integrated circuit that incorporates a tracing scheme (topography) illegally reproduced. This exception shall cease from the moment that the person referred in this item has received from the title holder or from its representative a written communication about the illegal origin of

such incorporation; a case in which may dispose of the object incorporating the tracing scheme (topography), with the obligation of paying to the title holder a reasonable royalty which lacking an agreement shall be set for trial by the competent judge.

Art. 182. The title holder of the rights over a tracing scheme (topography) may transfer, assign or grant licenses, according to dispositions in this Law.

For the effects of this Book, the sale, distribution or importation of a product which incorporates an integrated circuit, constitutes an act of sale, distribution or importation of such integrated circuit, in the measure that it contains the unauthorized reproduction of a protected tracing scheme (topography).

CHAPTER VII - UNDISCLOSED INFORMATION

Art. 183. Undisclosed information related to commercial, industrial secrets or any other type of confidential information is protected against its acquisition, usage or disclosure not authorized by the title holder, in the measure that:

a) The information is secret in the understanding that as an assembly or in the precise configuration and composition of its elements is not known in general nor easily accessible to the persons integrating the circuits who normally handle that type of information;

b) The information would have a commercial value, effectively or potential, because is secret; and,

c) In the given circumstances, the person who legally has it under control has adopted reasonable measures to keep it secret.

The undisclosed information may be referred, specially, to the nature, characteristics or purpose of the products; to the methods or processes of production; or, to the means or forms of distribution or commercialization of products or rendering of services.

Also are susceptible of protection as undisclosed information the technical knowledge integrated by manufacturing and production procedures in general; and, the knowledge related to employment and application of industrial techniques resulting from knowledge, experience or intellectual skill, which a person guards as confidential and allows him to keep and obtain a competitive or economic advantage against third parties.

Title holder is considered for the effects of this Chapter the natural or juridical person who has the legitimate control of undisclosed information.

Art. 184. The title holder may exercise the action set forth in this Law to impede that

undisclosed information be made public, acquired or used by third parties; to cease the acts currently or imminently leading to such disclosure, acquisition or use; and, to obtain compensations corresponding to such unauthorized disclosure, acquisition or use.

Art. 185. Without prejudice to other means contrary to honest uses or practices, the disclosure, acquisition or use of undisclosed information in a form contrary to this Law may result, in particular, from:

a) Industrial or commercial espionage;

b) Non compliance with a legal or contractual obligations;

c) Abuse of confidence;

d) The induction to commit any of the acts mentioned in items a), b), and c); and,

e) The acquisition of undisclosed information by a third party who knows, or does not know by negligence, that the acquisition implied the commitment of any of the acts mentioned in items a), b), c) and d).

Art. 186. Shall be responsible for the unauthorized disclosure, acquisition or usage of undisclosed information in a form contrary to honest and legal use and practices, not only the persons directly perform those acts, but also those who obtain benefits from such acts and practices.

Art. 187. The protection of the undisclosed information provided in Art. 173 shall last while the conditions therein established exist.

Art. 188. It shall not be considered that it enters into public domain or that is disclosed by legal disposition, that information which is furnished to any authority by the person possessing it, when is given with the purpose of obtaining licenses, permits, authorizations, registrations or any other acts of authority.

The respective authority shall be obligated to keep the secret of such information and adopt the measures to guarantee its protection against any disloyal use.

Art. 189. Whoever keeps undisclosed information may transmit it or authorize its use to a third party. The authorized user shall have the obligation of not disclosing it by any means, unless there is an agreement to the contrary with whoever transmitted or authorized the use of that secret.

Art. 190. Any person who by reason of his work, employment, position, exercise of his profession or business relation, has access to undisclosed information must abstain from using it and disclose it, without a justified cause, qualified by a competent judge and without consent of the title holder, even though his labor relationship, exercise of his profession or business relation has ceased.

Art. 191. If as a condition to approve the commercialization of pharmaceutical products or chemical and agricultural products used by new chemical entities producing chemicals, the presentation of data from tests or other undisclosed information is demanded, whose preparation involves a considerable effort, the authorities shall protect this data against any disloyal use, except when it would be necessary to protect the public and the necessary measures are adopted to guarantee the protection of data against any disloyal use.

The applicant to the approval of commercialization may indicate what is the data or information that the authorities cannot disclose.

No person distinct from the one who has presented the data referred to in the previous paragraph may, without authorization of the latter, count with such data in support of an application for approval of a product, while the information complies with the characteristics provided in this Chapter.

Art. 192. For the purposes indicated in the previous article, the competent public authorities shall abstain from requiring undisclosed information if the product or composition has a prior registration or certificate for its commercialization in another country.

Art. 193. The undisclosed information may be the object of deposit before a notary public in a sealed and waxed envelope, who shall notify the IEPI about its reception.

However, such deposit shall not constitute a proof against the title holder of the undisclosed information if that is stolen or lost in any fashion by whoever made the deposit, or such information was furnished by the title holder under any contractual relationship.

CHAPTER VIII - TRADEMARKS
SECTION I - REGISTRATION REQUIREMENTS

Art. 194. A trademark shall be understood to be any sign which serves to distinguish products or services in the market.

May be registered as trademarks the signs which are sufficiently distinctive and susceptible for graphic representation.

Also may be registered as trademarks the commercial slogans, provided they do not contain allusions to similar products or trademarks or expressions which may cause damage to said products or trademarks.

The associations of producers, manufacturers, renders of services, organizations or groups of persons, legally established, may register collective trademarks to distinguish in the market the products or services of the integrating persons.

Art. 195. Cannot be registered as trademarks signs which:

a) Cannot constitute a trademark according to Art. 184;

b) Consist of usual forms of the products or their containers, or in featured forms imposed by nature or the function of such product or the service provided;

c) Consist of forms which would not offer a functional or technical advantage to the pertinent product or service;

d) Consist exclusively of a sign or indication that may serve in commerce, to qualify or describe some feature of the pertinent product or service, including eulogies of same;

e) Consist exclusively of a sign or indication that is a generic or technical name of the pertinent product or service; or a common or usual designation of same in common language or commercial usage in the country;

f) Consist of an isolated color considered, without being limited to an specific shape, unless it is demonstrated that has acquired distinctiveness to identify the products or services for which is used;

g) Are contrary to Law, morals or public order;

h) May deceive commercial means or the public about the nature, source, method of manufacturing, features or suitability for use of the pertinent products or services;

i) Reproduce or imitate a protected denomination of origin, consists of a national or foreign geographic indication susceptible to induce confusion with respect to the products or services to which it applies, or, that its employment may induce the public to error with respect to its origin, source, qualifications or characteristics of the goods for which the trademarks are used;

j) Reproduce or imitate the name, coat of arms, flags and other emblems, initials, denominations or abbreviations of denominations of any state or any international organization, which are officially recognized, without a permit from a competent authority of the pertinent state or international organization. However, these signs may be registered when they do not induce confusion about the existence of a relation between such sign and the pertinent state or organization;

k) Reproduce or imitate official signs, seals or perforations for control or guaranty, unless their registration is applied by the competent organization;

l) Reproduce coins or bills in legal circulation in the country's territory, or from any other country, security titles and other mercantile documents, stamps, postage stamps, tax stamps, or fiscal revenue stamps in general; and,

m) Consists in the denomination of a protected vegetal species to be obtained in the country or abroad, or of a denomination essentially derived from same; unless the application is made by the same title holder.

When the signs are not intrinsically capable to distinguish the pertinent products or services, the National Industrial Property Bureau may hold down its registration to the distinctive character acquired through use to identify the applicant's products or services.

Art. 196. Cannot be registered as a trademark the signs that violate the rights of third parties, such as those that:

a) Are identical or alike in such a way that they may provoke confusion in the consumer, with a trademark already applied for registration or registered by a third party , to protect the same products or services, or products or services whose use may cause confusion or association with such trademark; or may cause damages to its title holder when its distinctive strength or commercial value is diluted, or create an unfair advantage of the trademark or the title holder prestige;

b) Are identical or alike to a protected commercial name in a way that they may cause confusion in the consumer public;

c) Are identical or alike to a commercial logo previously applied for registration or registered by a third party, in a way that may cause confusion in the consumer public;

d) Constitute a reproduction, imitation, translation, transliteration, or transcription, total or partial, of a sign notoriously known in the country or abroad, independently of the products or services to which it applies, when its use would be susceptible of causing confusion or association with such sign, an unfair advantage of its notoriety, or dilution of its distinctive strength or its commercial value;

It is understood that a sign is notoriously known when identified by the pertinent sector of the consumer public in the country or internationally.

This disposition shall not be applicable when the applicant is the legitimate title holder of the notoriously known trademark;

e) Are identical or alike to a sign of high renown, independently of the products or services for which the registration is applied;

It will be understood that is a sign of high renown when it would be known by the public in general in the country or abroad.

This disposition shall not be applicable when the applicant would be the

legitimate title holder of the trademark of high renown;

f) Consists in the complete name, pseudonym, signature, title, hypochoristic, caricature, image or portrait or a natural person, distinct from the applicant, or that would be identified by the pertinent sector of the public as a person distinct from that one, unless the consent of that person or his heirs would be accredited;

g) Consists in a sign that supposes an infraction to a copyright unless there is the consent of the title holder of such rights; and,

h) Consists, includes or reproduces medals, prizes, diplomas or other awards, unless furnished by those who grant them.

Art. 197. In order to determine if a trademark is notoriously known, it would be taken into account, among others, the following criteria:

a) The extension of its knowledge in the pertinent sector of the public as a distinctive sign of the products or services for which it is used;

b) The intensity and environment of the diffusion and of the publicity or promotion of the trademark;

c) The age of the trademark and its constant use; and,

d) The analysis of production and marketing of the products and services which distinguish the trademark.

Art. 198. In order to determine if a trademark is of high renown it shall be taken into account, among others, the same criteria of the previous article, but it must be known by the public in general.

Art. 199. When the trademark consists of a geographical name, the product cannot be commercialized or the service rendered without indicating in a visible way and clearly legible, the place of manufacturing of the product or origin of the service.

Art. 200. The first application for registration of a trademark validly submitted in a member country of the World Trade Organization, of the Andean Community, the Paris Convention for the Protection of Industrial Property, or another treaty or convention of which Ecuador would be a part, and that recognizes the right of priority with the same effects as provided in the Paris Convention or in another country which grants reciprocal treatment to the applications originating from member countries of the Andean Community, shall confer to the applicant or his representative the right of priority during the term of six months, starting on the date of the application to request the registration of the same trademark in Ecuador. Such application cannot refer to products or services distinct or additional to those contemplated in the first application.

A like right of priority exists for the use of a trademark in an exposition officially recognized, held in the country. The term of six months shall start from the date on which the products or services with the respective trademark would have been exhibited for the first time, which shall be accredited with a certificate issued by the competent authority of the exposition.

SECTION II - REGISTRATION PROCEDURE

Art. 201. The application for registration of a trademark must be submitted to the National Industrial Property Bureau, and shall comprise a single international class of products or services and shall contain the requirements determined in the Regulations.

Art. 202. The application must include:

a) The payment voucher of the corresponding fee;

b) Copy of the first application for registration of the trademark presented abroad, when claiming priority; and,

c) The other document set forth in the regulations.

Art. 203. In case of applying for the registration of a collective trademark, it must include the following:

a) Copy of the charter bylaws, for the organization or group of persons applying for the registration of a collective trademark;

b) Copy of the rules that the petitioner of the collective trademark uses for control of the products or services;

c) An indication of the conditions and the manner how the collective trademark shall be used; and,

d) The list of integrating persons.

Once the registration of the collective trademark is obtained, the association, organization or group of persons, must report
to the National Industrial Property Bureau about any modification produced.

Art. 204. The National Industrial Property Bureau at the time of reception, unless no documents referred to in item a) of Article 202 are enclosed, shall certify the date and time when the application is submitted and assign an order number which must be successive and continuous. If the documents referred above are missing, the process shall not be admitted nor the date and time shall be recorded.

Art. 205. The applicant for registration of a trademark may change his initial

application in any stage of the process, before its publication, only with relation to secondary aspects. Likewise, may eliminate or restrict the products or services specified. May also enlarge the products or services, within the same international class, until the publication pertinent to Art. 207.

The National Industrial Property Bureau may, at any time of the process require that the petitioner submits any modifications to the application. Such requirement for modification shall be processed in accordance with dispositions in the following article.

In no case the application may be modified to change the sign.

Art. 206. Once the application is admitted, the National Industrial Property Bureau shall examine it within the fifteen working days following its presentation, if it adjusts to the formal aspects required in this Chapter.

If the examination shows that the application does not comply with the formal requirements, the National Industrial Property Bureau shall notify the petitioner in order that within a term of thirty days, following his notification resolves the irregularities.

If within the indicated term the irregularities are not resolved, the application shall be rejected.

Art. 207. If the application for registration complies with the formal requirements, the National Industrial Property Bureau shall order its publication for only one time, in the Intellectual Property Gazette.

Art. 208. Within thirty working days following the publication, any person who may have a legitimate interest, may present an opposition duly based, against the registration of the application. Whoever presumes of having a legitimate interest to file an opposition may request an extension of thirty working days to submit the opposition.

Art. 209. The National Industrial Property Bureau shall not process oppositions which are comprised in the following cases:

a) That were filed extemporaneously;

b) That are exclusively based in an application whose date of presentation or priority validly claimed is after the presentation of the petition for registration of the trademark or whose application is being opposed; and,

c) That is based on the registration of a trademark which would have coexisted with that one whose registration is being applied, provided that the application for registration would have been submitted by the person who was its last title holder, during the six months following the expiration of the term for grace, in order to apply for the renewal of the trademark registration.

Art. 210. The National Industrial Property Bureau shall notify the petitioner in order that within the following thirty working days after the notification would make his allegations, if deemed convenient.

Once such term expires, the National Industrial Property Bureau shall resolve over the oppositions and the concession or denial of the trademark registration which shall appear in a duly motivated resolution.

At any time before the resolution is issued, the parties may reach a transactional agreement which shall be obligatory for the National Industrial Property Bureau. However, if the parties would not consent in the coexistence of identical signs to protect the same products or services, the National Industrial Property Bureau may object such action if it considers that it affects the general interest of consumers.

Art. 211. Once the term set forth in Art. 198 expires without any oppositions submitted, the National Industrial Property Bureau shall proceed to make an examination to grant or deny the registration of the trademark. The corresponding resolution shall be duly motivated.

Art. 212. The registration of a trademark shall have a duration of ten years starting on the date of its concession and may be renewed for successive periods of ten years.

Art. 213. The renewal of a trademark must be applied to the National Industrial Property Bureau, within six months before the expiration of the register. However, the title holder of the trademark shall enjoy a grace period of six months starting on the date of expiration of the register in order to apply for its renewal. During the above term, the registry of the trademark shall be in full force.

For renewal it would be sufficient only to submit the respective application and it shall be granted without further processing, in the same terms as the original registry.

Art. 214. The registration of the trademark shall expire in full right if the title holder does not request its renewal, within the legal term, including the grace period.

Art. 215. In order to determine the international class in the registers of trademarks, the International Classification of Nice of 15 June 1957 shall be used, with its upadatings and modifications.

The International Classification referred in the above paragraph does not determine if the products or services are similar or different between themselves.

SECTION III - RIGHTS CONFERRED BY THE TRADEMARK

Art. 216. The right to the exclusive use of a trademark shall be acquired by its registration at the National Industrial Property Bureau.

The trademark must be used as registered. Only variations meaning secondary modifications or alterations to the registered sign shall be admitted.

Art. 217. The registration of a trademark confers upon its title holder the right to act against any third party who uses it without his consent and, especially performs, with relation to identical or similar products or services for which the trademark has been registered, any one of the following acts:

a) Use in trade an identical or similar sign to that of the registered trademark, in relation to identical or similar products or services to those for which have been registered, when the use of this sign may cause confusion or produce to its title holder some economic or commercial damage, or cause a dilution of its distinctive strength.

   It would be presumed that exists a possibility of confusion when we are dealing with an identical sign to distinguish identical products or services;

b) Sell, offer, store or introduce into the market products with the trademark or offer services with same;

c) Import or export products with the trademark; and,

d) Any other which by its nature or purpose may be considered analogous or assimilable to the dispositions in the items above.

The title holder of the trademark may impede any and all the acts listed in this article, independently that they are made in digital communication networks or through other known or to be known communication channels.

Art. 218. Whenever the use of a trademark is made in good faith and does not constitute any damage, third parties may, without consent of the title holder of the registered trademark, use it in the market under their own name, domicile or pseudonym; a geographic name; or, any other true indication relative to the species, quality, quantity, destination, value, place of origin or time of production of its products or the rendering of services or other characteristics of same, provided that such use is limited to purposes of identification or information and is not capable to induce the public to an error about the source of the products or service.

The registration of the trademark does not confer to the title holder the right to prohibit the use of the trademark to a third party to advertise, offer for sale or indicate the existence or availability of products or services legitimately marked; or use the trademark to indicate the compatibility or adequation of spare parts or accessories used with the products of the registered trademark; provided that such use would be in good faith and limited for the purpose of information to the public and would not be susceptible to induce error or confusion over the origin of the company making the respective products.

Art. 219. The right conferred by the registration of the trademark does not grant its title holder the possibility to prohibit the incoming into the country of products marked by said title holder, his licensee or any other authorized person for such purpose, who would have sold or any other way legally introduced same into the national or foreign trade.

SECTION IV - CANCELLATION OF THE REGISTRATION

Art. 220. The registry of a trademark shall be cancelled by petition from any interested person, when without justified reasons the mark would not have been used by its title holder or licensee in at least one of the member countries of the Andean Community or in any other country with which Ecuador maintains current agreements over this subject, during the preceding three consecutive years to the date in which the cancellation is initiated. The cancellation of a register for lack of use of the trademark also may be requested as defense in legal proceedings for violation, opposition or voidance filed on the basis of the trademark which is not in use.

It shall be understood as means of proof over the usage of the trademark the following:

a) Commercial invoices showing the regularity and amount of trade before the initiation of the action for cancellation due to lack of use of the trademark;

b) The inventories of merchandise identified with the trademark, whose existence is justified by an auditors firm showing regularity in production or in sales, prior to the date of initiation of the action for cancellation for not using the trademark; and,

c) Any other means of adequate proof which accredits the use of the trademark.

The proof of use of the trademark shall correspond to the title holder of the registry.

The registry cannot be cancelled when the title holder demonstrates that the lack of use was due to force majeure, acts of God or restrictions in imports or other official requirements with a restrictive effect imposed on the goods and services protected by the mark.

Art. 221. There would be no cancellation of the registry of a mark, when it was used only with respect to some products or services protected by the respective registry.

Art. 222. Likewise, the registry of a trademark shall be cancelled, at the petition of the legitimate title holder, when this shall be identical or similar to a mark which is notoriously known or that would have high renown at the time of requesting the registry.

Art. 223. Once a request for cancellation is received, the title holder of the registered

trademark shall be notified in order that within the term of thirty working days starting on the date of the notice, submits his allegations and documents deemed convenient to proof the use of the mark.

Once the term referred to in this article lapses, it would be decided over the cancellation or not of the registry of the mark through a duly motivated resolution.

Art. 224. It shall be understood that a mark is in use when the products or services distinguishing it have been placed into the trade or are available in the market under that name, in the corresponding normal quantity and manner, taking into account the nature of the products and services and the modalities under which their commercialization into the market is made.

Subject to dispositions in the above paragraph, it shall be considered also that a mark is in use, in the following cases:

a) When is used to distinguish products or services exclusively destined for export;

b) When is used by a duly authorized third party, even though such authorization or license would not have been registered; and,

c) When genuine products with the registered trademark would have been introduced into the market by persons distinct from the title holder of the registry.

It would not be a reason for cancellation of the registry of a trademark, the fact that it would be used in a different manner from the way in which it was registered if it defers only in details or elements which do not alter its original distinctive character.

Art. 225. The person who obtains the cancellation of a mark shall have a preferent right to its registration, if requested within three months from the date of the resolution disposing its cancellation.

Art. 226. The title holder of a registry of a mark may renounce his rights totally or partially. If the renouncement is total the registry shall be cancelled. If it is partial, the registry shall be limited to the products or services over which the renouncement does not apply.

The renouncement shall not be admitted if there are over the trademark registered rights in favor of third parties, unless there is expressed consent from the title holders of such rights.

The renouncement shall only be effective as far as third parties, when there is a notation on the margin of the original registry to that effect.

SECTION V - VOIDANCE OF THE REGISTRY

Art. 227. Through the recourse of review, the Committee on Intellectual Property of the IEPI, may declare the voidance of the registry of a trademark, in the following cases:

a) When the registry would have been granted on the basis of false data or documents which are essential for its concession;

b) When the registry would have been granted in contravention to articles 194 and 195 of this Law; and,

c) When the registry would have been granted in contravention to article 196 of this Law; and,

d) When the registry would have been obtained in bad faith . Cases of bad faith, among others, shall be considered the following:

   1. When a representative, distributor or user of the title holder of a trademark registered abroad, would request and obtain the registry of that mark in his name or another confusing mark, without the expressed consent of the title holder of the foreign mark; and,

   2. When the registry application would have been submitted or, the registry would have been obtained by whoever develops as habitual activity the registration of trademarks for their commercialization; and

e) When the registry would have been obtained in violation to the set forth procedure or with any other violation of the Law which substantially have influenced for its granting.

Art. 228. The competent judge may declare the voidance of the registry of a trademark which would be comprised within the cases described in items a), c), d) and e), of the previous article, by virtue of the demand submitted after the term set forth in the Law has lapsed for the exercise of the recourse of review and, before ten years since the date of concession of the registry of the trademark, unless the recourse of review would have been filed previously and had been definitely denied.

In the case described in item b) of the previous article, the demand may be filed at any time after the term set forth in the Law has lapsed for the exercise of the recourse of review and provided this recourse would not have been definitely denied. In this case the demand for voidance may be filed by any person.

The declaration of voidance of a registry shall be notified to the National Industrial Property Bureau, in order that a notation be made on the margin of the registry.

CHAPTER VII - COMMERCIAL NAMES

Art. 229. It shall be understood by commercial name a sign or denomination which identifies a business or economic activity of a natural or juridical person.

Art. 230. The commercial name shall be protected without obligation to register it.

The right of exclusive use of a commercial name derives from its continuous public use and in good faith in the trade, for at least six months.

The commercial names may be registered at the National Industrial Property Bureau, but the right to its exclusive use is only acquired in the terms described in the previous paragraph. However, such registry constitutes a presumption of property in favor of its title holder.

Art. 231. A sign or denomination which may be confused with another used previously by another person or with a registered trademark cannot be adopted as a commercial name.

Art. 232. The process of registration of a commercial name shall be established for the registration of trademarks, but the term of duration of such registry shall have the character of indefinite.

Art. 233. The title holders of commercial names shall be entitled to impede that third parties would use, without their consent, adopt or register identical or similar commercial names or signs which may provoke a risk of confusion or association.

Art. 234. The dispositions of this Law over trademarks shall be applicable as pertinent to commercial names. The norms about trademarks notoriously known and of high renown shall apply to commercial names which enjoy similar notoriety or high renown.

CHAPTER VIII - DISTINCTIVE APPEARANCES

Art. 235. It would be considered distinctive appearance any assembly of characteristic colors, forms, presentations, structures and designs and particularly of a commercial establishment, which identifies and distinguishes the presentation of services or sale of products.

Art. 236. The distinctive appearances shall be protected in an identical manner as the commercial names.

CHAPTER IX - GEOGRAPHIC INDICATIONS

Art. 237. It shall be understood by geographical indication that which identifies a product as original from the territory of a country, a region or locality in that territory, when a determined quality, reputation or other characteristic of the product is basically attributable to its geographic origin, including the natural and human factors.

Art. 238. The use of geographical indications, in relation to natural, agricultural, artisan or industrial products, is exclusively reserved to the producers, manufacturers

and artisans who have production or manufacturing establishments in the designated locality or region or evoked by said indication or denomination.

Art. 239. The right of exclusive usage of Ecuadorian geographical indications is recognized since the declaration which to that effect would issue the National Industrial Property Bureau. Its use by non authorized persons, shall be considered an act of disloyal competition, inclusive in the cases in which they be accompanied by of expressions such as "gender", "class", "type", "style", "imitation" and other similar which equally would create confusion on the consumer.

Art. 240. Cannot be declared as geographical indications those which:

a) Are not adjusted to the definition contained in Art. 237;

b) Are contrary to the good habits or to the public order or may induce public error about the source, nature, method of manufacturing or the characteristics or quality of the respective products; and,

c) Are common or generic indications to distinguish the pertinent product, when considered as such by the experts on the subject or by the general public.

Art. 241. The declaration of protection of a geographical indication shall be made officially or by petition of whoever demonstrates to have a legitimate interest, such as natural or juridical persons directly dedicated to the extraction, production or manufacturing of the product or products which are likely to be covered by the geographical indication. Public authorities of central or sectional administration, shall be considered also interested persons, when the geographical indications are located in their respective jurisdictions.

Art. 242. The request for a declaration of protection of a geographical indication shall be submitted to the National Industrial Property Bureau and shall contain the requisites indicated in the Regulations.

Art. 243. Once such request is admitted to the process the procedure set forth for the registration of trademarks shall apply.

Art. 244. The tenure of the declaration conferring exclusive rights for the use of a geographical indication is determined by the subsistence of the conditions which motivated same. The National Industrial Property Bureau may leave without effect such declaration in the event that the conditions which originated the request are modified. The interested parties may request again when they consider that the conditions for their protection are restored.

Art. 245. The request to use a geographic indication shall be submitted to the National Industrial Property Bureau by persons who are directly dedicated to the extraction, production or manufacturing of products distinguished by the geographic indication and perform their activity within the territory determined in their declaration.

Art. 246. The Director of the National Industrial Property Bureau, officially or by petition from a party, shall cancel the authorization for the use of a geographic indication, after hearing to the one who obtained it, if it was granted without existing the requisites provided in this Chapter or if they cease to exist.

Art. 247. The National Industrial Property Bureau may declare the protection of geographic indications from other countries, when the applications are submitted by the producers, extractors, manufacturers or artisans who have a legitimate interest, or the public authorities of same. The geographic indications must have been declared as such in their countries of origin.

The geographic indications protected in other countries shall be considered common or generic in order to distinguish some product, while such protection subsists.

BOOK III - NEW PLANT VARIETIES
SECTION I - DEFINITIONS AND REQUISITES

Art. 248. All cultivated plant varieties genders and species which imply the vegetal hereditary improvement of plants are protected through the granting of a certificate of obtention; in the measure that such cultivation and improvement is not prohibited by reasons of human, animal or vegetal health.

Wildlife species not improved by man shall not be granted protection.

For the protection of new plant varieties the dispositions of tutorship to the biologic and genetic patrimony of the country shall apply as listed in paragraph two of article 120.

Art. 249. For the effects of this Book the terms indicated below shall have the following meanings:

OBTENTOR: The person who has created, discovered or developed a variety, the employer of such person or whoever has allocated such work, or holder of rights of the first or second persons above, as applicable. By creating is understood the obtention of a new variety through the application of scientific knowledge to the hereditary improvement of the plants.

DISCOVERY: It shall be understood as the application of human intellect to any activity which has the purpose of making known the characteristics or properties of the new variety or of a variety essentially derived while complying with the requisites of newness, distinguishability, homogeneity and stability. It does not cover the simple finding. The species which were not planted or improved by man shall not be subject to protection.

LIVE SAMPLE: The sample of a variety provided by the applicant of the certificate of new plant varieties, which shall be used to conduct the proofs of newness,

distinguishability, homogeneity and stability.

VARIETY: An assembly of cultivated botanic individuals which are distinguished by determined morphological, physiological, cytological and chemical characteristics, which may be perpetuated for reproduction, multiplication or propagation.

ESSENTIALLY DERIVED VARIETY: Shall be considered an essentially derived from an initial variety originating from that one or from a variety which in turn would be mainly detached from the first one, conserving the expression of the essential characters resulting from the genotype or the combination of genotypes of the original variety and, even when the initial may be distinguished clearly, it agrees with that one in the expression of essential characters resulting from the genotype or the combination of genotypes of the first variety, or is according to the initial variety in the expression of essential characters which result from the genotype or the combination of genotypes of the first variety, unless in respect to the differences resulting from the process of derivation.

MATERIAL: The material of reproduction or plant multiplication in any form; the product of the harvest, including whole plants and parts of plants; and, any product made directly from the product of a harvest.

Art. 250. The National New Plant Varieties Bureau shall grant certificates of obtentor, provided that the varieties are new, distinguishable, homogenous and stable; and, would have been assigned a denomination which constitutes its generic designation.

Art. 251. A variety shall be considered new if the material of reproduction or of multiplication, or a product of its harvest would not have been sold or delivered in other legal way to third parties, by the obtentor or his representative, or with his consent, for its commercial exploitation.

The newness is lost in the following cases:

a) If the exploitation in the national territory has started at least a year before the date of presentation of the application or claimed priority;

b) If the exploitation abroad has started at least four years before the date of presentation of the application or the claimed priority; and,

c) In the case of trees and vineyards, if the exploitation abroad has started at least six years before the date of presentation of the application or the claimed priority.

Art. 252. The newness is not lost for sale or delivery of the variety to third parties, among other cases, when such acts:

a) Are the result of an abuse in detriment of the obtentor or his representative;

b) Are part of an agreement to transfer the right over the variety;

c) Are part of an agreement according to which a third party incremented, for account of the obtentor, the stocks of reproduction or multiplication materials, provided such multiplied stocks would return to the obtentor's or his representative control and, such stocks would not be used to produce another variety;

d) Are part of an agreement according to which a third party made field or laboratory tests and procedure tests in a small scale to evaluate the variety;

e) Have as a purpose the harvest material obtained as a secondary product or surplus of the variety or of the activities mentioned in items c) and d) of this article, on condition that this product be sold or delivered anonymously;

f) Be performed to comply with a legal obligation, particularly referring to biological security or the registration of the varieties in an official registry of varieties admitted for commercialization; or,

g) Be performed under any other illegal form.

Art. 253. A variety is distinct, if it is clearly different from any other whose existence is notoriously known, on the date of presentation of the application or claimed priority.

The presentation in any country of an application for the granting of an obtentor's right would make that variety notoriously known starting on that date, if such act would lead to a concession of the right or the registration of the variety, as applicable.

The notoriety of the existence of another variety may be established by diverse references, such as: exploitation of the variety already in course, registration of the variety in a varieties registry kept by a recognized professional variety association, or the presence of the variety in a collection for reference.

Art. 254. A variety is homogenous if sufficiently uniform in its essential characters, taking into account the foreseeable variations according to its form of reproduction, multiplication or propagation.

Art. 255. A variety is stable if its essential characters are kept unaltered from generation to generation and at the end of each particular cycle of reproduction, multiplication or propagation.

Art. 256. No right related to the registered designation of the denomination of the variety shall be an obstacle for its free use, including after the expiration of the obtentor's certificate.

The designation adopted may not be the object of registration as a trademark and

shall be sufficiently distinctive in relation to other denominations registered previously.

The Regulations shall determine the requisites for the registry of designations.

Art. 257. The obtentor or his representative shall be entitled to request an obtentor's certificate, being either natural or juridical persons, national or foreign. In case several persons have commonly created and developed a variety, the right to protection shall correspond to all of them in common; unless there is a stipulation to the contrary between the coobtentors, their share quotas shall be equal.

When the obtentor is an employee, the right to request an obtentor's certificate shall be governed by the labor contract under whose framework the variety was created and developed. In lack of contractual stipulations the dispositions in Art. 129 of this Law shall apply.

Art. 258. Whoever has a legitimate interest may claim the capacity of a true title holder of an application of new plant varieties from the National New Plant Varieties Bureau according to the established procedure for the oppositions; and, before the competent judge at any time up to ten years after the obtentor's certificate had been granted.

SECTION III - REGISTRATION PROCEDURE

Art. 259. The application for the granting of an obtentor's certificate for a new vegetable variety shall be submitted to
the National Vegetables Obtentions Bureau and shall contain the requisites set forth in the Regulations.

Art. 260. The application shall include:

a) The payment voucher of the corresponding fees;

b) An exhaustive description of the procedure of obtention of the variety;

c) An indication of the location where the live samples of the variety are found, in a way that the National Vegetable Obtentions Bureau may verify them at any time or the document which accredits their deposit before a competent national authority of a member country of the International Union for the Protection of Vegetable Obtentions (UPOV); and,

d) All other documents determined by the Regulations.

The National Vegetables Obtentions Bureau shall not demand a deposit of the live sample when such deposit had been accredited by a competent national authority of a member country of the International Union for the Protection of Vegetable Obtentions (UPOV); unless in the case that would be necessary to resolve an opposition, or would be required for proofs of visibility, homogeneity and stability.

Art. 261. The National Vegetables Obtentions Bureau, at the time of reception of the application, shall certify the date and time of presentation and assign a successive and continuous order number. If the documents referred in the items a) and b) of the previous article are missing, the process shall not be admitted nor shall be recorded the date of presentation.

Art. 262. Once the application is admitted by the National Vegetables Obtentions Bureau it shall be examined , within 15 working days after its presentation, if it complies with the formal aspects required in this Book.

If from the examination the application does not comply with above requirements, the National Vegetables Obtentions Bureau
shall formulate the corresponding observations in order that the petitioner submits his reply or completes the background within a term of three months following the date of notice.

Art. 263. The obtentor shall enjoy provisional protection during the period comprised between the submission of the application and the concession of the certificate. In consequence, the applicant shall have the faculty to initiate the corresponding
legal action in order to avoid or to cease the acts which constitute a violation of his rights, except an action to claim damages which may be filed once the certificate of obtentor has been obtained. The setting up of any compensations may cover the damages caused by the defendant from the time he knew about the application, which legally is known from its publication.

Art. 264. The title holder of an application for the granting of an obtentor's certificate submitted in a member country of the UPOV, in a country of the Andean Community, or in another country which grants a reciprocal treatment to the applications derived from the Andean Community, shall enjoy a right of priority for a term of twelve months to apply for protection of the same variety in Ecuador. This term shall start on the date of presentation of the first application.

In order to benefit from the right of priority, the obtentor shall claim the priority of the first application. The National Vegetables Obtentions Bureau may require that within the term of three months starting on the date of presentation of the second application a copy of the first one should be attached.

Art. 265. If the registry application complies with formal requirements, the National Vegetables Obtentions Bureau
shall order its publication for only one time in the Intellectual Property Gazette.

Meantime the publication is made, the file shall be reserved and may only be examined by third parties with the consent of the applicant or when the applicant would have started legal or administrative action against third parties based on his application.

The term indicated in the previous paragraph may be extended for a like time by

petition from the interested party submitting an opposition, on the request for examination of the application's background.

The oppositions shall be supported according to dispositions in Book II, Chapter II, Section III, as pertinent.

The oppositions may be based on questions related to newness, distinguishability, homogeneity or stability, where the applicant is not entitled to protection, as well as reasons for biosecurity, attempts against public order, protection of morals and human health or lives of persons, animals or vegetables or to avoid serious damage to the environment.

Art. 266. The National Vegetable Obtentions Bureau shall issue a technical ruling on the newness, distinguishability, homogeneity and stability in all cases. In cases where oppositions are presented, such Bureau, shall proceed to a technical examination of the Vegetable Obtention. The NVOB may require a report from experts or scientific or technological organizations, public or private which are considered capable to make such examination about the conditions of distinction, homogeneity and stability of the vegetable variety. Likewise, when convenient, may require reports from competent national offices of other countries. All this information shall be placed to the knowledge of the applicant to guarantee his right to be heard.

The conditions of distinction, homogeneity and stability are essentially technical and must be evaluated on the basis of international criteria for each vegetable species.

Art. 267. Once the requirements set forth in this Book have been complied, the National Vegetable Obtentions Bureau shall proceed to grant or deny the obtentor's certificate.

Art. 268. The term of duration of the obtentor's certificate shall be of twenty five years in the case of vineyards, forestry trees, fruit trees, including grafts; and, twenty years for the other species, starting on the date of presentation of the application.

For those varieties which have not been commercialized in the country, the term of duration of the obtentor's certificate, initially registered in the country of origin, shall last the time remaining to complete the period of tenure of the first registration in that country.

SECTION III - OBLIGATIONS AND RIGHTS OF THE OBTENTOR

Art, 269. The title holder of a registered obtention shall have the obligation to maintain or replace the deposit made during the tenure of the obtentor's certificate.

Art. 270. Without prejudice to dispositions in Art. 263, the obtentor's certificate will give its title holder the faculty to initiate the legal or administrative actions provided under this Law, in order to avoid or cease the acts which constitute a violation of his right and obtain the corresponding compensation measures.

Specially, the title holder shall have the right to impede that third parties make without his consent the following acts with respect to reproduction, propagation or multiplication materials of the protected variety:

a) Production, reproduction, multiplication or propagation;

b) Preparation with purposes of reproduction, multiplication or propagation;

c) Offer for sale, sales or any other act which implies the introduction into the market of reproduction, propagation or multiplication materials, with commercial purposes;

d) Exports or imports;

e) Possession for any of the purposes mentioned in the previous items;

f) The acts indicated in the previous items with respect to the product of the harvest, including whole plants or parts of plants, obtained from unauthorized use of reproduction or multiplication materials of the protected variety, unless the title holder would have been able reasonably to exercise his exclusive right in relation to such material of reproduction or multiplication; and,

g) Commercial usage of ornamental plants or parts of plants as multiplication material with the purpose of producing ornamental and fruit plants or parts of ornamental, fruit plants or cut flowers.

Art. 271. The dispositions of the previous article shall also apply to:

a) The varieties essentially derived from the protected variety, when this is not in turn an essentially derived variety; and,

b) The varieties whose production needs repeated employment of the protected variety.

Art. 272. It does not harm the right of the obtentor who reserves and sows for his own use, or sells as raw materials or food the product obtained from the cultivation of the protected variety. Excepted from this article is the commercial usage of multiplication, reproduction or propagation materials, including whole plants and their parts of fruit, ornamental and forestry species.

Art. 273. The obtentor's rights does confer upon the title holder the right to impede that third parties use the protected variety, when such use concerns:

a) Private environment without commercial purposes;

b) Experimentation; and,

c) Obtention and exploitation of a new variety, unless is an essentially derived variety of a protected variety.

Art. 274. The obtentor's rights shall not extend to acts related to materials of his variety, or a variety described in Art. 272 which has been sold or commercialized in some other manner in the national territory by the title holder or with his consent, or materials derived from such material, unless such acts:

a) Imply a new reproduction or multiplication of the variety in question; or,

b) Involve the exports of materials of such variety, which allows its reproduction, to a country that does not protect the varieties of gender, or the specimen to the scale belonging to the variety, unless the exported material is destined for consumption.

For the purposes falling under dispositions in this article, it shall be understood as "material)", in relation to a variety:

1. The vegetal reproduction or multiplication material, in any form;

2. The product of harvest, including whole plants and parts of plants; and,

3. Any product manufactured directly from the harvest products.

Art. 275. With the purpose of insuring an adequate exploitation of the protected variety, in exceptional cases of national security or public interest, the National Government may declare free availability, on the basis of a fair compensation to the obtentor.

The competent national authority shall determine the amount of compensations, prior a hearing for the parties and expert evaluation, on the basis of the extension of exploitation of the variety object of this license.

SECTION IV - VOIDANCE AND CANCELLATION

Art. 276. Through the recourse of review, the Intellectual Property Committee of the IEPI, officially or by petition from the party, may declare the voidance of the obtentor's certificate, in the following cases:

a) If the variety did not comply with the requisites of newness, distinguishability, stability and homogeneity, at the time of concession of the obtentor's certificate;

b) If the obtentor's certificate was conferred in favor of who was not the obtentor; and,

c) If it would have been granted with any other violation of the Law which

substantially had induced its concession or would have been obtained on the basis of erroneous or false data, documents, information or description.

Art. 277. The Intellectual Property Committee of the IEPI, declares the cancellation of the obtentor's certificate in the following cases:

a) When is proven that the protected variety has failed to comply with the conditions of newness, homogeneity, distinguishability and stability; and,

b) When the obtentor does not present the information or documents to demonstrate the maintenance or replacement of the registered variety.

Art. 278. The State recognizes the right of the agriculturers, which derives from past, present and future contributions to conservation, improvement and availability of phitogenetic resources. These rights include the right to conserve their traditional practices, preserve, improve and interchange their seeds, accede to technology, credits and the market and, be recompensed for the use of the seeds they have developed.

For this effect, the Special Law shall regulate the cases of application of this principle.

SECTION V - INDUSTRIAL PROPERTY AND VEGETABLE OBTENTIONS ACTS AND CONTRACTS

Art. 279. The rights to industrial property and vegetable obtentions are transferrable by an act between live persons or transmissible by cause of death, before or after their registration or concession.

Art. 280. The title holders of industrial property and vegetable obtentions may grant licenses to third parties for their exploitation or use, by means of written contracts. Such contracts may not contain restrictive clauses for commerce or create disloyal competition.

The sublicenses shall require the express authority of the title holder of the rights.

Art. 281. The transfer of licenses, modifications and other acts affecting the rights of industrial property and vegetable obtentions, shall be registered in the corresponding registries on the same date of the corresponding application presentation. The effects of the registration shall be retroactive to the request for same. Such acts shall be effective against third parties, starting on the date of registration. However, the lack of registry does not invalidate the act or contract.

Art. 282. The rights over a trademark or commercial name may be transferred with or without the business it identifies.

The collective trademark may be transferred provided there is the authorization of the association, organization, or group of persons who have applied to or registered and that of the National Industrial Property Bureau. In any case, its use shall be reserved to the integrating parties of the association, organization or group of persons.

The collective trademark cannot be object of license in favor of persons different from those authorized to use it, according to the regulations for its employment.

There shall not be a registration required when such acts or contracts refer to the industrial property right whose registration is not obligatory.

Art. 283. The rights of industrial property and over vegetable obtentions are considered movable capital goods exclusively for the constitution of liens over them. However, it could be decreed a prohibition to expropriate such rights subject to dispositions in the Civil Procedures Code, as well as their attachment and auction or public bidding sale.

BOOK IV - DISLOYAL COMPETITION

Art. 284. Disloyal competition is considered any fact, act or practice contrary to the honest usage or customs in the development of economic activities.

The expression economic activities, shall be understood in the widest sense, covering professional activities such as attorneys, physicians, engineers and other fields in the exercise of any profession, art or occupation.

For the definition of honest uses the criteria observed in international commerce shall apply; however when dealing with acts or practices performed in the context of international operations, or that would have points of connection with more than one country, the criteria over honest use which prevails in international commerce shall be observed.

Art. 285. Acts of disloyal competition are considered, among others, those capable of causing confusion, independently of the means used, with respect to the establishment of the products, services or commercial or industrial activity of a competitor, false statements in the exercise of trade capable to discredit the establishment, the products or services or the commercial or industrial activity of a competitor, as well as any other act susceptible to damage or dilute the intangible assets or reputation of the company; the indications or statements whose use in the exercise of trade may induce the public to error over the nature, method of manufacturing, characteristics, aptitude in the employment or quality of the products or rendering of services; or disclosure, acquisition or use of secret information without the consent of whoever controls it.

These acts may refer, among others, to trademarks, registered or not, commercial names, commercial identifications, appearance of products or establishments;

product or services presentations; celebrities or fictitious personalities notoriously known; manufacturing processes of products; convenient use of products or services for specific purposes; quality, quantity, or other characteristics of products or services; their geographical origin; conditions in which they are offered, limitations, publicity, irrespectful, defaming to the competitor or his products or services, and comparative publicity not verified; and boycott.

By dilution shall be understood the intangible act, the vanishing of the distinctive character, or the publicity value of a trademark, of a name or other identifying commercial factor, the appearance of a product, or the presentation of products and services, or of a celebrity or fictitious person notoriously known.

Art. 286. It shall be considered also an act of disloyal competition, independently of the actions to be enforced for violation of non disclosed information, any act or practice which takes place in the exercise of economic activities which consists or results in:

a) The disloyal commercial use of data, undisclosed proofs or other secret data whose preparation involves a considerable effort and which have been presented to the competent authority with the purpose to obtain approval for the commercialization of pharmaceutical, chemical, agricultural or industrial products;

b) The disclosure of such data , except when it would be necessary to protect the public and measures shall be adopted to guarantee the protection of the data against any disloyal commercial use; and,

c) The unauthorized extraction of data whose preparation involves a considerable effort for its disloyal commercial use.

Art. 287. Without prejudice to other applicable legal actions, any damaged natural or juridical person may exercise the actions provided in this Law, including caution and preventive measures.

The measures referred to in the previous paragraph may be requested also by craft, trade or professional unions who have a legitimate interest to protect their members against acts of disloyal competition.

TITLE I - PROTECTION AND OBSERVANCE OF THE RIGHTS OF INTELLECTUAL PROPERTY
CHAPTER I - GENERAL PRINCIPLES

Art. 288. The violation of any of the rights over intellectual property set forth in this Law, shall result in the exercise of civil and administrative legal actions, without

prejudice to applicable penal actions, if the deed would be typified as a crime.

The administrative tutorship of intellectual property rights shall be governed by dispositions in Book V of this Law.

Art. 289. In case of violation of rights recognized by this Law, a demand may be filed on:

a) The ceasing of violation acts;

b) The final seizing of the products or other objects involved in the transgression, the final withdrawal from commercial channels of merchandise involved in the transgression, as well as its destruction;

c) The final seizing of the apparatus and means employed to commit the transgression;

d) The final seizing of the apparatus and means to storage copies;

e) The compensation for damages and torts;

f) The repair in any other form, of the effects generated by the violation of the legal right; and,

g) The total amount of the legal processing costs.

It may also be demanded the application of rights set forth in the current international agreements of Ecuador, especially those determined in the Agreement over the Aspects of Intellectual Property related to Commerce (AAIPC) of the World Trade Organization.

Art. 290. In order for the title holder of the copyright and adjoining rights recognized in this Law, to be admitted as such before any judicial or administrative authority, it shall be enough the name or pseudonym, or any other denomination, leaving no doubt about the identity of the natural or juridical person involved, listed in the works, interpretation or performance, radio broadcasting production or emission, in the usual form.

Art. 291. No authority, nor natural or juridical person, may authorize the use of a work, interpretation, phonographic production or radio broadcasting emission or of any other presentation protected by this Law, or render support for its use, if the user does not have the prior expressed authorization of the title holder of the rights or his representative. In case of non compliance the representative shall be solidarily responsible.

Art. 292. If the violation of the rights is made through digital communication networks, the responsibility shall apply to the operator or any other natural or juridical person in control of the informatic system connected to such network, through which is allowed, induced or facilitated the communication, reproduction, transmission or

any other violation act of the rights included in this Law, provided he has knowledge or has been warned about the possible transgression, or has not been possible for him to ignore it without his serious negligence.

It shall be understood that he has been warned about the possibility of the transgression when well based and duly documented warning has been given.

The operators or other natural and juridical persons referred in this norm, shall be exempt of responsibility for the acts or technical measures adopted to avoid the occurrence of the transgression or to continue same.

Art. 293. The title holder of a right over trademarks, commercial names or vegetable obtentions who knows that the Superintendency of Companies or Banks has approved the adoption by companies under its control of a denomination including identical signs to those of the trademarks, commercial names or vegetable obtentions may request the IEPI the suspension of use of the above denomination or company name to eliminate the risk of confusion or undue usage of the protected sign.

The IEPI shall advise the parties and the Superintendency of Companies or Banks through a resolution; the Company shall have a term of ninety days starting on the date of notice of the IEPI resolution, to adopt other denomination or company's name; a term which may be extendable for only one time and for a like period provided there would be justifiable causes.

In the event that a new denomination or company's name is not adopted within the term set forth in the above paragraph, the Superintendency shall proceed to dissolve or liquidate the company.

CHAPTER II - INTELLECTUAL PROPERTY PROCESSES
SECTION I - KNOWLEDGE PROCESS

Art. 294. The competency for the knowledge of controversies over this subject shall fall, in first instance, over the District Judges for Intellectual Property and, in second instance on the District Courts for Intellectual Property.

The recourse of cassation (repeal) applied on this matter shall be known by the Hall Specialized in Intellectual Property of the Supreme Court of Justice.

Art. 295. The District Court No. 1 for Intellectual Property is located in Quito, has jurisdiction in the provinces of Pichincha, Imbabura, Carchi, Cotopaxi, Tungurahua, Chimborazo, Bolívar, Pastaza, Napo and Sucumbíos.

The District Court No. 2 for Intellectual Property, located in Guayaquil has jurisdiction in the provinces of Guayas, Los Ríos, El Oro and Galápagos.

The District Court No. 3 for Intellectual Property, located in Cuenca has jurisdiction in

the provinces of Azuay, Cañar, Morona Santiago and Zamora Chinchipe.

The District Court No. 4 for Intellectual Property, located in Portoviejo has jurisdiction in the provinces of Manabí and Esmeraldas.
Art. 296 The competency on the subject of intellectual property is fixed according to the rules set forth in articles 27, 28, 29 of the Civil Procedures Code and in this article.

Also competent to know about these causes shall be the judges at the location where the transgressions have been committed.

When dealing with transmissions through a satellite, the transgression shall be understood that was committed at the place where such transmission originated, or where the signal was accessible to the public in a predominant form.

Art. 297. The demands related to intellectual property shall be processed at a summarial verbal trial, with the modifications listed in this Chapter.

Art. 298. During the trials on this matter is admissible to reconvene, which shall be resolved in the judgement, without altering the process of the cause. The reconvention would be filed at the conciliation audience, after the demand has been answered. At such audience the plaintiff must reply. If he does not reply the cause shall be judged as negative, pure and simple, on the basis of fact and law.
Art. 299. If during the term of proof a testimonial hearing would be requested, the judge shall fix the time and place for this oral audience, in which the party who requested the proof shall formulate his questions, and the other party may request.

Art. 300. If experts are required, one for each party shall be assigned, unless the parties would agree in the assignment of a single expert.

Without prejudice to what the experts submit in their written report, any one of the parties may request the judge that they appear at an audience to report verbally on the questions posed by the parties.

Cause for destitution of District Judges for Intellectual Property, in addition to others provided in the Law, shall be the violation of the mandate contained in this norm.

Art. 301. All proofs requested within the respective term shall be practiced within thirty days following its conclusion, unless the parties by common accord would request an extension.

Art. 302. The judge shall have the faculty to order that the proof under control of the contrary party or in his possession be submitted, for which purpose he shall fix the time and place for this exhibit. If the party required does not exhibit the proof, the judge in order to resolve, may base himself on the information submitted by the party who requested the proof.

If any of the parties would not facilitate the information, codes of access or of in any

other way would impede the verification of instruments, equipment or other means in which unauthorized reproduction may be stored, these parties shall be presumed violators of the rights or intellectual property.

If the trial would involve a violation of a patent or intervention related to procedures, the load of the proof over the legality of the procedure used for the manufacturing of the product shall correspond to the defendant.

Art. 303. The compensation for damages and torts shall include the losses experienced and lost profits, caused by the transgression. The amount of income not obtained shall be fixed taking into account, among others, the following criteria:

a) The benefits which the title holder would have obtained if the violation did not occur;

b) The benefits obtained by the violator as a consequence of the violation;

c) The price, remuneration or royalty which the infractor would have to pay the title holder, for the legal exploitation of the rights violated; and,

d) The reasonable expenses, including legal and professional fees, incurred by the title holder in relation to the controversy.

Art. 304. The condemning sentences of civil actions for violation of intellectual property rights shall additionally impose on the violator from three to five times the total value of the copies of works, interpretations, productions or broadcasting emissions, or of royalties which otherwise the title holder would have obtained from the rights of legitimate exploitation of these and other renderings of intellectual property.

The fines which according to this disposition are collected shall be destined one third to IEPI; one third to the title holder of the violated right and one third shall be distributed in the following manner:

a) Legal Function Budget;

b) Solidarity Fund; and,

c) Promotion of Science and Technology through the IEPI.

SECTION II - PREVENTION AND CAUTION RULINGS

Art. 305. The preventive and caution rulings related to intellectual property shall be processed according to Section 27, Title 2, Book 2, of the Civil Procedure Code, with the modifications listed in this Section.

Art. 306. The judge shall order the removal of the demand to a superior court

provided proofs are submitted over precise and concordant evidence allowing to reasonably presume the actual or imminent violation of rights over acknowledged intellectual property rights recognized in this Law, or over information which would lead to the reasonable fear that all this would attempt against preventive measures and caution due to the transgression.
The judge shall verify if the petitioner is the title holder of the rights, according to the presumptions set forth in this Law. Otherwise, the information furnished with the demand, which supports the presumption he is the title holder, would be sufficient through an affidavit included in the demand.

Art. 207. The judge shall require that the plaintiff, considering the circumstances, places a sufficient bond or guarantee to protect the defendant and avoid any abuse.

Art. 208. In order to avoid the transgression or its continuance against any of the rights acknowledged in this Law, avoid that the merchandise is introduced into the trade, including imported goods, or in order to preserve pertinent proofs related to the presumed transgression, the judges are empowered to order, on petition from one of the parties, preliminary caution measures which, according to the circumstances, would be needed for the urgent protection of such rights and, especially:

a) The immediate ceasing of illegal aactivities

b) The suspension of the activity for the usage, exploitation, sale, offering for sale, imports or exports, reproduction, communication, or distribution, as applicable; and,

c) Any other which avoids the continuation of the violation of rights.

The attachment of income obtained from the transgression activities may be ordered, over goods which insure payment of the compensation, over the products or merchandise which violated the right of intellectual property, as well as over equipment, apparatus and means used to commit the transgression and over the originals and copies which served for the reproduction or communication.

Withholding shall be ordered over amounts due in connection with exploitation or remuneration.

The prohibition to leave the country shall be ordered if the defendant would have no domicile or permanent establishment in Ecuador.

Art. 309. The immediate ceasing of illegal activities may include:

a) The suspension of violating activities or the prohibition to the transgressor to renew same, or both;

b) The provisional closing of the location or establishment, which necessarily

shall be issued when violating merchandise or illegal copies constitute a substantial portion of the usual business of the violator;

c) The withdrawal from trade of the merchandise, illegal copies or objects which violate the Law, and its legal deposit;

d) The disablement of the goods or object involved in the transgression an, if required, the destruction of patterns, plates, matrix, instruments, negatives, plants or parts of same and other elements destined to the employment of patented inventions, printing of marks, unauthorized reproduction or communication, or of those whose predominant use would be to facilitate the suppression or neutralizing of any means of technical protection or electronic information and that predominantly serve for violation acts of any intellectual property rights; and,

e) Any other measure which becomes necessary to the urgent protection of the rights over intellectual property, in line with the nature and circumstances of the transgression.

Art. 310. The measures shall be executed in the presence of the judge, if the plaintiff so requires it, who may be advised by the necessary experts or officials of the IEPI, whose rulings in this action shall be included in the corresponding act and shall serve to execute it. The order issued by the judge according to the preceding article shall imply, without necessity of any further formality or additional ruling, the possibility of adoption of any practical measure needed for the full performance of a caution, including the breaking of locks, without prejudice to the judge's faculty who at the time of such actions may order any other caution measure required for the urgent protection of the rights, either officially or at the verbal petition of the party.

Art. 311. The demands submitted in order to file a caution, as well as the corresponding rulings, shall have the category of reserved and shall not be advised to the demanded party until after their performance.

Art. 312. If the plaintiff would indicate that for the proof of the violation of the rights a previous legal inspection is required, the judge may order pertinent caution actions without notifying the opposing party. For this purpose he will take care of same with the respective officials.

Art. 313. In case the works fixed electronically in digital information devices or by analogous procedures, or whose seizure would be difficult or may cause serious damages to the defendant, the judge by previous notice to the plaintiff and if considered convenient, may order that the goods seized remain under the custody of the defendant, after they are identified, individualized and inventoried, without prejudice of the seizure and fixation over removable supports.

The judge may place seals over the identified, individualized and inventoried goods.

Art. 314. Once this caution measure has been taken, the demand shall be

subpoenaed to the defendant and the judge shall order to commence the proof period disposed in Art. 917 of the Civil Procedure Code.

The caution measures shall expire if within the term of 15 days of such action the demand is not enacted on the principal issues.
In this case, provisional measures are revoked or expire by action or omission of the plaintiff, or in the cases where later on is determined that there was no transgression or threat of violation of an intellectual property right, the competent judge shall order the plaintiff, on prior petition from the defendant, to pay the compensation for damages and torts.

Art. 315. The judges who do no comply with the provisions in Art. 74 of the Civil Procedures Code within 48 hours following the reception of the demand or unjustly deny the adoption of a caution action, shall be responsible before the title holder of the right for the damages caused, without prejudice to the corresponding penal action.

Art. 316. In order to protect commercial secrets or confidential information, during the performance of the caution action set forth in this Law, only the judge or expert(s) assigned shall have access to the information, codes and other elements, as far as indispensable for the practice of such measure. On behalf of the defendant may be present the persons he delegates and on behalf of the plaintiff his legal attorney. Everyone who in this way would have access to such information would be obligated to keep absolute reserve and shall be subject to this and other laws prescribed for the protection of commercial secrets and confidential information.

Art. 317. Either in the practice of caution actions or in the presentation of proofs, may intervene as experts the officials appointed by the IEPI. The judge shall be obligated to require the expert intervention of such officials, on request of the party.

Art. 318. The judges shall observe additionally the procedures and measures set forth in international agreements or treaties about current intellectual property rights, as applicable. The judges shall be exempt of responsibility in the terms of Art. 48 item 2 of the Agreement on Aspects of Intellectual Property Rights related to trade.

CHAPTER III - CRIMES AND PENALTIES

Art. 319. Whoever is in violation of intellectual property rights, stores, manufactures, uses with commercial purposes, offers for sale, sells, imports or exports, shall be reprimanded with prison from three months to three years and fine a of five hundred to five thousand constant value units (UVC), taking into consideration the value of the damages caused:

a) A product covered by a patent of invention or model of utility obtained in the country;

b) A product manufactured through the use of a procedure covered by a patent of invention obtained in the country;

c) A product covered by a drawing or industrial model registered in the country;

d) A genetic obtention registered in the country, as well as its material of reproduction, propagation or multiplication;

e) A tracing scheme (topography) registered in the country, a semiconductor circuit which incorporates such tracing scheme (topography) or an article which incorporates such semiconductor circuit;

f) A product or service which uses an unregistered trademark identical or similar to a notorious or high renown trademark, registered in the country or abroad;

g) A product or service which uses an unregistered trademark, identical or similar to a trademark registered in the country; and,

h) A product or service which uses an unregistered trademark or geographical indication, identical or similar to a geographical indication registered in the country.

In the cases of items g) and h) the products or services which use an unregistered sign, must be identical or similar to the protected products or services by the trademarks or geographical indications registered in the country.

Art. 320. Whoever is in violation of intellectual property rights shall be reprimanded with a like penalty as indicated in the previous article:

1. Disclosure, acquisition or usage of commercial secrets, industrial secrets or confidential information;

2. In products or services or commercial transactions using marks or geographical indications, not registered in the country, which constitute an imitation of notorious, distinctive or high renown signs, registered in the country or abroad which may reasonably be confused with the original; and,

3. In products or services or commercial transactions using marks or geographical indications, which constitute an imitation of various signs registered in the country which may be reasonably confused with the original, to distinguish products or services which may supplant those protected.

Art. 321. Whoever is in violation of intellectual property rights, using commercial names over which no rights have been acquired, which are identical to public and notoriously known in the country commercial names or trademarks registered in the country, or notorious or of high renown trademarks registered in the country or abroad, shall be reprimanded with prison from one month to two years and fine of two hundred fifty to two thousand five hundred constant value units (UVC), taking into consideration the value of the damages caused.

Also shall be reprimanded with the penalty indicated in the previous paragraph, those persons who in violation of intellectual property rights use distinctive, identical or similar appearances which are publicly and notoriously known in the country.

Art. 322. Whoever in violation of intellectual property rights acts as shown below; shall be reprimanded with prison from one month to two years and a fine of two hundred fifty to two thousand five hundred constant value units (UVC), taking into consideration the value of the damages caused:

a) Manufacture, commercialize or store labels, seals or containers which show marks of high renown or notorious, registered in the country or abroad;

b) Manufacture, commercialize or store labels, seals or containers which show marks of denominations of origin,
registered in the country; and,

c) Separate, tear out, replace or use labels, seals or containers showing legitimate marks to be used in products of different origin.

With an equal sanction shall be reprimanded who store, manufacture, use with commercial purposes, offer for sale, sell, import or export articles which contain false indications about the nature, source, method of manufacturing, quality, characteristics or aptitude for the employment of pertinent products or services; or contain false information about prizes or other benefits.

Art. 323. Whoever stores, manufactures, uses with commercial purposes, offers for sale, sells, imports or exports falsified products identified with marks of high renown or notoriously known, registered in the country or abroad, or registered in the country, shall be reprimanded with prison from three months to three years and a fine of five hundred to five thousand constant value units (UVC), taking into consideration the value of the damages caused.

Also shall be reprimanded with the penalty indicated in the previous paragraph whoever refills with false products the containers identified with a different trademark.

Art. 324. Shall be reprimanded with prison from three months to three years and a fine of five hundred to five thousand constant value units (UVC), taking into consideration the value of the damages caused, whoever in violation of copyrights or adjoining rights:

a) Alters or mutilates a work, inclusive through the removal or alteration of electronic information about the regime of applicable rights;

b) Registers, publishes, distributes, communicates or reproduces, totally or partially, a not owned work as if it would belong to him;

c) Reproduces a work;

d) Publicly communicates works, videograms or phonograms, totally or partially;

e) Introduces into the country, stores, offers for sale, sells, leases or in any other manner places into circulation or to the disposal of third parties illegal reproductions of works;

f) Reproduce a phonogram or videogram and in general any protected work, as well as the presentations of interpreters or actors, totally or partially, imitating or not the external characteristics of the original, as well as those who introduce into the country, store, offer for sale, sell, lease or in any other manner place into circulation or to the disposition of third parties illegal reproductions of works; and,

g) Introduce into the country, store, offer for sale, sell, lease or in any other manner place into circulation or to the disposition of third parties reproductions of works, phonograms and videograms in which information on the regimen of applicable rights has been altered or removed.

Art. 325. Shall be reprimanded with prison from one month to two years and fine of two hundred fifty to two thousand five hundred constant value units (UVC), taking into consideration the value of the damages caused, those who in violation of the copyrights or adjoining rights:

a) Reproduce a larger number of copies from a work that the number authorized by the title holder;

b) Introduce into the country, store, offer for sale, sell, lease or in any other manner place into circulation or to the disposition of third parties reproductions of works, in a number that exceeds the number authorized by the title holder;

c) Retransmit by any means the emissions of radio broadcasting organizations;

d) Introduce into the country, store, offer for sale, sell, lease or in any other manner place into circulation or to the disposition of third parties apparatus or other means destined to decipher or decodify codified signals or in any other way tricks or breaks the technical means of protection applied by the title holder of the right.

Art. 326. Shall be reprimanded with prison from one month to two years and a fine of two hundred fifty to two thousand five hundred constant value units (UVC), who illegally prevent, not comply or impede the performance of a preventive caution court ruling.

Art. 327. Aggravating circumstances, in addition to those provided in the Penal Code, are the following:

a) Having received personally the transgressor perceiving that he was about to commit a violation of rights;

b) Knowing that the products object of the transgression may provoke damage to health; and,

c) That transgressions are committed with respect to unpublished works.

Art. 328. The transgressions determined in this Chapter are legally punishable and subject to investigation.

Art. 329. Civil and penal actions prescribe in accordance with the norms of the Civil Code and Penal Code, respectively, except acts committed in violation to the moral rights, which are imprescriptible.

Unless there is a proof to the contrary and, for the effects of the prescription of action, shall be taken as the date on which the transgression was committed the first day of the year following the last edition, reedition, reproduction, communication, or other use of a works, interpretation, production or emission of a radio broadcast.

Art. 330. In all cases comprised in this Chapter, the seizing of all objects which would have served directly or indirectly for the commitment of a crime shall be ordered. Such seizing may be ordered by the penal judge, at any time during the summarial trial and obligatorily in the act opening the plenary cause.

Art. 331. The product of the fines determined in this Chapter shall be destined in equal parts to the Legal Function and the IEPI, to be employed at least fifty per cent in instruction and education regarding intellectual property.

BOOK V - ADMINISTRATIVE TUTORSHIP OF INTELLECTUAL PROPERTY

Art. 332. The observance and compliance of Intellectual Property rights are of Public Interest . The State, through the Ecuadorian Institute o Intellectual Property (IEPI), shall exercise the administrative tutorship and control its compliance and observance.

Art. 333. The IEPI through its national Directorate offices shall exercise, officially or by petition from a party, the functions of inspection, vigilance and sanction to avoid and reprimand violations to intellectual property rights.

Art. 334. Any person affected by a violation or possible violation of intellectual property rights may ask the IEPI to adopt the following measures:

a) Inspection;

b) Obtention of information; and,

c) Sanction of the violation of intellectual property rights.

Art. 335. The inspections shall be made by the National Directors or their delegates, in the manner determined in the Regulations. At the moment of inspection and, as a requisite to validly conduct it, a copy of the administrative act shall be delivered to whoever had ordered it and, if applicable, the request from the affected party.

The petitions submitted to obtain caution measures shall remain in reserve until executed and, even further on the necessary measures to preserve confidentiality of undisclosed information to be submitted during the course of the process shall be adopted by the authorities.

Art. 336. If during such action it would be proven, even presumptively (prima facie) the violation of a right of intellectual property or facts which reflect unequivocally the imminent possibility of such violation, the preparation of a detailed inventory of goods, of whatever kind, related to that violation shall be conducted. A list of observations on what was examined by the means shall be prepared in order to determine the status of inventory goods.

This measure may include the immediate removal of signs which clearly violate intellectual property rights, without prejudice to the seizing and deposit of merchandise and other objects violating rights on patents, trademarks or other forms of intellectual property.

The IEPI, through competent regional bureaus may adopt any measure of caution and urgent protection of the rights above referred in this Law, accompanied of proofs indicated in Art. 306. This action shall be provisional, and shall be subject to revocable or confirmation according to dispositions in Art. 339.

Art. 337. When a violation of intellectual property rights is presumed, the IEPI may require any information to set forth the existence or not of such violation. This information must be delivered within a term not exceeding 15 days, from the date of notice.

Art. 338. Regardless of the case of provisional caution measures adopted according to Art. 336, prior the adoption of any resolution, the party against whom the process was filed must be heard. It is estimated that if convenient, an audience may be called at which the interested parties may express their positions.

Art. 339. Once concluded the investigation procedure, the IEPI shall issue a motivated resolution. If it is determined that a violation of intellectual property rights existed, the transgressor shall be sanctioned with a fine between twenty and seven hundred constant value units (UVC) and, may order the adoption of any of the caution measures provided in this Law or confirm that they were issued provisionally.

If there would be the presumption of a crime being committed, a copy of the administrative process shall be sent to the competent Penal Judge and to the Public Ministry (of Justice).

Art. 340. The IEPI shall impose an equal sanction to that set forth in the previous article to whoever impede or make difficult compliance with the acts, measures or inspections ordered by the IEPI, or that they do not send the information requested within the granted term.

Art. 341. Announced or known by any other way the communication published about works legally protected without obtaining the corresponding authorization, the title holder of the rights may request to the National Copyright or Adjoining Rights Bureau the respective prohibition, which shall be ordered immediately. To this effect is presumed that the organizer, company agent or user does not have due authority because of the protects from the title holder of rights.

Art. 342. Customs Administrators and all who have control of the incoming and exit of goods to or from Ecuador, have the obligation of impeding that products which in any way violate intellectual property rights come in to or are exported from Ecuador.

If by petition of the interested party the incoming or exportation of such goods is not impeded, they shall be considered accomplices of the crime committed, without prejudice of applying the corresponding administrative sanction.

When impeded, officially or on petition of a party, the incoming or export of any product violating intellectual property rights, this shall be reported through a detailed listing to the IEPI's President, who within a term of 5 days shall confirm or revoke the measure taken. Once the measure is confirmed, the goods shall be placed at the disposal of a penal judge.

If the Customs Administrator or any other competent official would deny to observe the measure required or had not issued a pronouncement within a term of three days, the interested party may resort directly, within the following 3 days, to IEPI's President to order such action.

Whoever orders the measure may demand a caution according to the following article.

Art. 343. Without prejudice to what is set forth in the previous article, any one of the National Directors, according to the area of their competency, may order the petition from the party, the suspension of the incoming or exports of any products which in any way violate the rights of intellectual property.

The resolution shall be dictated within the term of three days since the petition. If it is necessary or convenient, it may be ordered that the petitioner places a sufficient caution. If this is not made within the term of three days after requested, the measure shall be without effect.

By petition of the affected party with the suspension, the National Director of IEPI, as applicable, shall dispose the holding of an audience to examine the merchandise and, if convenient, revoke the measure. If not revoked, all the acts and the process

shall be sent to a penal judge.

Art. 344. Without prejudice to what is set forth in this Law, on the subject of administrative procedures, the Bylaws of the Juridical Administrative Regime of the Executive Function shall be applied.

Art. 345. The public forces and especially the Judicial Police are obligated to render to the IEPI officials the aid they may request to comply with their functions.

THE ECUADORIAN INSTITUTE OF INTELLECTUAL PROPERTY (IEPI)
CHAPTER I - PURPOSES OF THE INSTITUTE

Art. 346. The Ecuadorian Institute of Intellectual Property (IEPI), as a juridical person of public law, with its own patrimony, administrative, economic, financial and operational authority, with its headquarters in Quito, shall have under its charge, in the name of the State, the following functions:

a) Propitiate the protection and defense of intellectual property rights, recognized by the national legislation and in the International Treaties and Conventions;

b) Promote intellectual creation, both in its literary, artistic, or scientific form, and the industrial application field, as well as the diffusion of technological knowledge within cultural and production sectors; and,

c) Prevent the acts and actions which may attempt against intellectual property and free competition, as well as guard the compliance and respect of principles set forth by this Law.

CHAPTER II - ORGANIZATION AND FUNCTIONS
SECTION I - GENERAL DISPOSITIONS

Art. 347. The IEPI shall be composed of the following organisms:

- The President;
- The Executive Council;
- The Committee on Intellectual Property;
- The National Industrial Property Bureau;
- The National Copyright and Adjoining Rights Bureau; and,
- The National Vegetable Obtentions Bureau.

Art. 348. The other norms for the organization and functioning of the IEPI shall be listed in the regulations to this Law and in the functional organic regulations.

SECTION II - THE PRESIDENT OF IEPI

Art. 349. The President of IEPI shall be designated by the President of the Republic

and shall last six years in its functions. Shall be its legal representative and directly responsible for technical, financial and administrative actions.

In case of resignation, definite absence or any other impediment which disables him to continue exercising his charge, the President of the Republic shall immediately proceed to designate his replacement, who shall also last during six years in his functions. In case of fault or temporary absence shall be replaced by the National Director appointed by the Executive Council.

Art. 350. To be President of the IEPI shall be necessary to hold a university title, accredit his specialization and professional experience in the areas of intellectual property and comply with the other requisites indicated in the Regulations.

Art. 351. The duties and attributions of the President are as follows:

a) Legal Representation of the IEPI;

b) Control compliance and application of laws and international conventions on intellectual property;

c) Prepare the annual budget of IEPI and submit it to approval by the Executive Council;

d) Designate and remove the National Directors, Secretary General and other personnel of IEPI;

e) Propose the guidelines and strategies for international negotiations which the National Government shall make on the subject of intellectual property, as well as integrate the groups of negotiators on this subject, in consultation and coordination with the Ministry of Foreign Relations;

f) Order bordering measures, as disposed in this Law;

g) Reply to consultations posed on application of norms over intellectual property. The replies to consultations shall involve the IEPI in the cases submitted. Such consultation cannot relate to subjects which at the time of their submission are in process before any organization of the IEPI; and,

h) The others established in this Law and its Regulations.

SECTION III - THE EXECUTIVE COUNCIL

Art. 352. The Executive Council is the controlling and consulting organism of the Institute and shall be in charge of the following attributions:

a) Fix and approve the fees;

b) Approve the Budget of the Institute;

c) Dictaminate over projects of amendment to this Law, the Regulations and the International Conventions over Intellectual Property;

d) Propose to the President of the Republic drafts of amendments to the Law and Regulations;

e) Designate and remove the Members of the Committee of Intellectual Property according to this Law and regulations;

f) Dictate the norms that are necessary for the thorough compliance with this Law; and,

g) The others set forth by this Law and its regulations.

Art. 353. The Executive Council shall be integrated by:

a) The President of the Ecuadorian Institute of Intellectual Property, who shall preside it;

b) The Minister of Foreign Commerce, Industrialization and Fishing, or his delegate;

c) The Minister of Foreign Relations, or his delegate;

d) The Minister of Education and Culture or his delegate;

e) A representative from the Council of Production Chambers and Associations or his alternate;

f) A representative from the Collective Action Companies and from Copyright and Adjoining Rights Group Organizations or his alternate; and,

g) A representative designated by the Council of Universities and Polytechnical Schools CONUEP or his alternate.

The resolutions of theExecutive Council shall be adopted by a favorable vote of at least five of its members.

SECTION III - NATIONAL DIRECTORATES

Art. 354. The National Directors shall exercise the titleship of their respective National Directorates . They shall be designated for a period of six years and may be reelected indefinitely. In case of fault or temporary absence of a National Director, the President of IEPI may appoint the official to subrogate him.

Art. 355. In order to be a National Director it would be required that he be an Attorney or Doctor in Jurisprudence, accredited professional experience in the matter and comply with with the other requisites indicated in the respective regulations.

Art. 356. The National Directorates shall be in charge of the administrative application of this Law and other legal norms over intellectual property, within the scope of their competency.

Art. 357. The final administrative acts and those which impede continuation of the process dictated by National Directors, shall be susceptible of the following recourses:

a) Recourse of reposition, before the same functionary who dictated it;

b) Recourse of appeal, before the Committee on Intellectual Property; and,

c) Recourse of review, before the Committee on Intellectual Property.

The interposition of these recourses is not indispensable to exhaust the administrative way and, hence, the actions provided in the Law of the Contentious and Administrative may be filed directly against the final administrative acts or those who impede the continuation of the processes dictated by the National Directors.

The recourses shall be granted in the suspensive and devolution effects at the main site.

The District Courts of the Contentious Administrative may suspend officially or by petition of a party the performance of a recurrent act, in case that such performance may cause damages which are impossible or difficult to repair.

Art. 358. The National Direction of Copyrights and Adjoining Rights shall have the following attributions:

a) Organize and administer the National Register of Copyrights and Adjoining Rights;

b) Administer copyrights and adjoining rights processes contemplated in this Law;

c) Approve the bylaws of collective action companies, copyrights and adjoining rights, issue its authorization for operations or suspend them; as well as exercise vigilance, inspection and control over such companies, and intervene them if necessary; and,

d) Exercise the other attributions that on the subject of copyrights and adjoining rights are set forth in this Law and its regulations.

Art. 359. The National Direction of Industrial Property shall have the following attributions:

a) Administer the processes of granting, registration or deposit, as applicable, of patents of invention, models of utility, industrial design, trademarks, slogans, commercial names, distinctive appearances, geographic indications, tracing schemes for semiconductor circuits (topographies) and other forms of industrial property which are set forth in the corresponding legislation;

b) Resolve over the granting or denying of registrations;

c) Process and resolve over oppositions submitted;

d) Administer on the subject of industrial property the other administratives processes contemplated in this Law; and,

e) Exercise the other attributions which on the subject of industrial property are set forth in this Law and its regulations.

The registry of industrial property is a single one and confers a right covering the national scope. In consequence, the National Director of Industrial Property is the only competent authority to resolve on the granting or denying of industrial property registers on a national level.

Art. 360. The National Vegetable Obtention Bureau shall have the following attributions:

a) Administer the processes for deposit and acknowledgement of rights over new vegetable obtentions;

b) Resolve over the granting or denial of registers;

c) Process and resolve on oppositions submitted;

d) Administer on the subject of vegetable obtentions and the other administrative processes contemplated in this Law;

e) Organize and maintain a national center of deposit for vegetable obtentions or delegate this activity to private initiative; and,

f) Exercise the other attributions which on the subject of vegetable obtentions are set forth in this Law and its regulations.

Art. 361. The Executive Council may distribute the competence of the National Directorates on the applicable subject in respect to the various forms of Intellectual Property and, in consequence vary the denomination of same.

Likewise, to the effect of guaranteeing the exercise of the administrative tutorship of the IEPI, the Executive Council may create regional subdirectorates and determine the limits of their administrative competence.

The National Directors, according to the area of their competence, may order bordering measures according to dispositions in Art. 351 of this Law.

SECTION IV - COMMITTEES ON INTELLECTUAL, INDUSTRIAL AND VEGETABLE OBTENTIONS; AND COPYRIGHTS

Art. 362. The Committees on Intellectual, Industrial and Vegetable Obtentions; and Copyrights, shall be integrated by three members each, appointed by the Executive Council of the IEPI.

The Members of these Committees shall last six years in their posts and must have the same requisites as to be Ministers of the Superior Court (of Justice).

The Executive Council shall appoint also the corresponding alternate members of the board who shall replace the main ones in case of temporary or definite absence.

Art. 363. On request of the President of IEPI, the Executive Council, may divide the Committees of Intellectual, Industrial Property and Vegetable Obtentions; and Copyrights through the creation of specialized halls in function of the subject, and consequently increase the number of members of each Committee.

Art. 364. The Committees on Intellectual, Industrial Property and Vegetable Obtentions; and, Copyrights, shall have the following attributions:

a) Process and resolve consultations from the National Directors with respect to the oppositions submitted against any application for concession or registration of intellectual property rights;

b) Process and resolve on appeal recourses and review;

c) Process and resolve the applications for cancellation of the concession or registration of intellectual property rights, except the dispositions in art. 277; and,

d) The others set forth by this Law.

The resolutions of the Committees on Intellectual, Industrial Property and Vegetable Obtentions and Copyrights shall be adopted by majority vote, with any blank vote being recorded.

Art. 365. Against the resolutions of the Committees on Intellectual, Industrial Property and Vegetable Obtentions and Copyrights no administrative recourse may be opposed, save the recourse of reposition known to the Committees who issued same, but it would not be necessary to exhaust the administrative actions. Against the resolutions of the Committees may be filed the actions provided in the Law of Jurisdiction of the Contentious Administrative.

SECTION V - FINANCIAL RECOURSES AND FEES

Art. 366. The IEPI shall have financial selfsufficiency. Any authority is prohibited to distract for other purposes the funds collected by the IEPI or allocated to its functioning.

Art. 367. The capital patrimony and resources of the IEPI are:

a) Goods acquired at any title;

b) The product of the collection of fees set forth in this Law;

c) The product of the fines, as set forth in this Law;

d) The product of the sale of the Intellectual Property Gazette and other publications made; and,

e) The other established in the Law.

Art. 368. Fees shall be established for the following acts and services:

a) The presentation of registration applications, concessions or rights;

b) Presentation of renewal or modification of registries;

c) The inscription of contracts;

d) The certificates of concession or registration of rights;

e) The granting of certified copies of any administrative act or document;

f) The granting of certificates on official search requested to the IEPI;

g) Prior examinations to the concession of patents of invention or models of utility and the registration of vegetable obtentions;

h) Expert examinations and reports performed by IEPI;

i) The procedures leading to the exercise of administrative tutorship;

j) The presentation of oppositions;

k) The interposition of administrative recourses;

l) The applications for cancellation;

m) The granting of information through magnetic means;

n) The maintenance of records;

ñ) Maintenance of live samples; and,

o) The use of technological information.

Art. 369. The fees set forth in the previous article shall be fixed by the Executive Council of the IEPI in general minimum living salaries, taking into account the criteria of proportion of the fees with the cost of the service and its efficiency. The fees shall be collected and administered by the IEPI.

FINAL TITLE - GENERAL DISPOSITIONS

Art. 370. In the cases where this Law foresees the possibility of enlarging or extending a term, such extension shall be considered as granted by the competent administrative authority, based on the request of the applicant.

The terms which expire on holidays shall become due on the next working day.

Art. 371. When a priority is claimed, no legislation or authentication of documents for registry applications in progress of any modality of intellectual property shall be required.

Art. 372. Without prejudice to stipulations in this Law, shall be applicable the dispositions contained in international agreements or conventions over intellectual property in force in Ecuador.

In the application and interpretation of the norms over intellectual property shall have preference those which grant the major protection. Consequently, no disposition of the national legislation or international agreements may be invoked in the sense to reduce, limit, damage, affect or harm the level of protection recognized to the benefit of title holders of intellectual property.

Art. 373. The IEPI shall have coactive jurisdiction for the collection of fines and fees provided in this Law.

Art. 374. Any controversy on the subject of intellectual property may be submitted to arbitration or mediation, according to the Law of Arbitration and Mediation published in Official Register No. 145 of 4 September 1997.

For this purpose the IEPI is authorized to sign the respective arbitration agreement without the requirement to consult to the Attorney General of the State.

Art. 375. According to Art. 3 of the Organic Law of the Judicial Function, shall be appointed district judges for intellectual property, who shall have competence to know the subject dealt in this Law.

Art. 376. In order to guarantee the tutorship of the biologic and genetic patrimony of

the country as provided in the Constitution and this Law, the legal access to biologic and genetic resources indicated shall be permitted provided it complies with such requisites, the Andean decisions and the international treaties and conventions.

COLLECTIVE RIGHTS

Art. 377. A special (sui generis) system is set forth for collective intellectual rights of the ethnias and local communities.

Their protection, value mechanism and its application shall be subject to a special Law to be issued for that purpose.

REPEALINGS

Art. 368. All legal or regulatory dispositions opposing this Law and especially the following norms, are hereby repealed:

1. Law of Copyrights, published in the Official Register No. 149 of 14 August 1976;

   a) Supreme Decree No. 2821, published in the Official Register No. 735 of 20 December 1978, and its amendment by Law No. 161, published in Official Register No. 984 of 22 July 1992; and

   b) The Regulations to the Law of Copyrights, published in the Official Register No. 495 of 30 December 1977; and all other Executive Decrees or Ministerial Accords related to the subject which in any form shall oppose or result incompatible with the dispositions of this Law.

2. Trademarks Law, published in the Official Register No. 194 of 18 October 1976;

3. Law on Patents of Exclusive Exploitation of Inventions, published in Official Register No. 195 of 19 October 1976; and,

4. Article 5 of Supreme Decree No. 2241 of 6 October 1964, published in Official Register No. 360 or 26 October 1964.

TRANSITORY DISPOSITIONS

FIRST. Until the corresponding regulations are issued, the Regulations to the Decisions of the Andean Community Commission shall be applicable, as far as they are not incompatible with the dispositions in this Law.

SECOND. Until the Executive Council of the IEPI shall issue the corresponding resolution, shall apply the fees for services regulated by Ministerial Accord No. 0106, of 18 April 1997, published in Official Register No. 48 of 21 April 1997. Such fees shall be collected directly by the IEPI from the date of enforcement of this Law,

destined for its operations.

The income, by application of the above Ministerial Accord, or the fees for publication of the Intellectual Property Gazette fixed by the Executive Council of IEPI shall be distributed 60% in favor of IEPI and 40% in favor of the MICIP as ruled by Executive Decree No. 386 of 10 June 1997.

THIRD. This Law shall apply to all the works, interpretations or performances, productions, emissions or other copyright or adjoining right, semiconductor circuit tracings (topographies), referred to in this Law, created previously to its tenure, provided they have not passed to public domain. For the determination of the date on which they shall pass to public domain, once this Law is enacted, the terms of protection set forth therein shall apply.

The applications in progress shall be resolved according to this Law.

FOURTH. Any industrial property right validly granted according to existing legislation prior to the date of enactment of this Law, shall subsist for the time of the granting.

The applications in progress at the National Industrial Property Bureau, shall be resolved according to this Law, without prejudice to dispositions in Art. 372.

FIFTH. Within the six months following the enactment of this Law, the existing action companies must amend their bylaws and operations to the norms of this Law and, submit the pertinent documents to the National Director for Copyrights of the IEPI for its registration. The action entities which obtained the authorization to operate shall be entitled to fix fees. Until then the fees authorized by the Ministry of Education and Culture shall apply.

SIXTH. The personnel who presently renders their services under the Law of Civil Service and Administrative Career in the National Industrial Property Bureau of the Ministry of Foreign Commerce, Industry and Fishing; in the National Registry of Copyrights or the Ministry of Education and Culture and the corresponding Vegetable Obtentions in the National Agricultural and Livestock Bureau of the Ministry of Agriculture and Livestock, shall pass all their acquired rights and obligations to render services at the IEPI.

As far as personnel who works through service contracts, the laws governing them shall apply.

SEVENTH. The officials and employees working for the National Industrial Property Bureau, Copyrights and Vegetable Obtentions and, because their continuance is not convenient to the IEPI, shall receive a compensation of 30 million sucres and, additionally the equivalent to an average monthly remuneration of their income of the last year multiplied by six and the number of years or fraction of years in the Public Sector, up to a maximum of 160 million sucres.

EIGHTH. The goods which are presently at the disposal of the National Industrial Property Bureau and those corresponding to Vegetable Varieties in the National Agricultural and Livestock Bureau of the Ministry of Agriculture and Livestock, and the National Register of Copyrights shall pass to be the property of the IEPI.

NINTH. The budget allocations destined to the National Industrial Property Bureau, to the National Copyright Register, and the Administrative Unit of Vegetable Varieties of the National Agricultural and Livestock Bureau of the Ministry of Agriculture and Livestock, shall be assigned to the Ecuadorian Institute for Intellectual Property for the 1998 fiscal year.

TENTH. The Supreme Court of Justice, according to item 17 of article 12 of the Organic Law for the Judicial Function, shall organize the district courts for intellectual property, which shall assume all competency in legal subjects conferred in this Law. Until these intellectual property district courts are created, the District Courts of the Contentious and Administrative shall know about the causes related to this matter according to dispositions and competencies attributed to this Law, except the caution actions, which shall be known by civil judges.

ELEVENTH. Independently of the collection of patrimonial rights by the respective action company, the collection of financial rights by public communication made by means of any musical works, with or without letter, and musical dramatic, shall be in charge of a sole entity made up by the Society of Ecuadorian Authors and Composers (SAYCE) and the Association of Ecuadorian Phonogram Producers (ASOTEC), a sole entity which shall collect on the basis of collective action.

Until comes into operation the single collection entity, the SAYCE shall continue collecting these rights.

The single collection entity shall be formed within 60 days after the constitution of the Executive Council of IEPI.

TWELVETH. The natural or juridical persons who publicly distribute videograms by sales and/or lease of same or renting of copies, by themselves or through their respective Associations, shall have a term of 3 years starting on the date of publication of this Law in the Official Register to send the IEPI an inventory of all the works they are distributing, as well as the licenses and payment vouchers of applicable royalties or franchises.

The legalizing of the social object mentioned in the above paragraph does not exclude in any way the respect, collection and payment of copyrights starting on the enactment of this Law.

THIRTEENTH. The exploitation of vegetable varieties made prior to the enactment of this Law, shall be subject to what has been agreed upon and will suppose the collection of royalties. In lieu of a written contract, the following shall be observed:

a) The amount of royalties fixed in contracts for the same variety and species during the last three years preceding; and,

b) The liquidation of pending royalties for payment as applicable, shall be made within 180 days starting on the enactment of this Law.

FOURTEENTH. The rights of Obtentor granted according to the existing legislation prior to the date of enactment of this Law, shall subsist for the time they were granted. In relation to their use, enjoyment, rights, obligations, licenses and, royalties, the norms of this Law shall apply.

The pending resolutions on applications for the obtention of vegetable varieties shall be made according to this Law.

FIFTEENTH. The designations which are determined in items e) and f) of Art. 353 shall be made by election colleges within 15 days after the enactment of this Law. The composition of the Executive Council shall be determined within 30 days after this Law is published.

SIXTEENTH. In order to make effective the decentralization and deconcentration, it will be indispensable that the National Directorate and the Regional Subdirectorates shall have available all budgetary, technological and human resources to allow an efficient administration of the processes, especially in relation to the access by telecommunication to the data base of the National Direction and, the possibility of register "on line" the exact hours of presentation of the applications. No Regional Subdirectorates may function until informatic and technological resources are installed which allow to enter applications into the data base of the National Direction, at the same time of presentation.

FINAL DISPOSITIONS

1. The President of the Republic within the constitutional term of 90 days, shall issue the corresponding regulations for the application of this Law.

2. This Law, by its special character prevails over any other opposing law.

Given in the city of Saint Francis of Quito, Metropolitan District, in the Meeting Hall of the National Congress of Ecuador, on 22 April 1998.

(Signatures follow:)

Dr. Heinz Moeller Freile, President of the National Congress.
Dr. Jaime Dávila de la Rosa, Secretary

National Palace in Quito, 8 May 1998.

BE ENACTED:

Fabián Alarcón Rivera, Interim Constitutional President of the Republic

CERTIFIED as a true copy of the Original:

Dr. Wilson Merino M., Secretary General of Public Administration